



(27,328)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 573.

LOWER VEIN COAL COMPANY, APPELLANT,

vs.

INDUSTRIAL BOARD OF INDIANA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF INDIANA.

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1 Pleas of the District Court of the United States for the District of Indiana, Begun and Holden at the United States Court House in the City of Indianapolis, in said District, on the First Tuesday in November, in the Year of Our Lord One Thousand Nine Hundred and Eighteen, Before the Honorable Albert B. Anderson, Judge of said District Court.

No. 278. In Equity.

LOWER VEIN COAL COMPANY

VS.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. Dresser, and Samuel R. Artman, as Members of Industrial Board of Indiana; Edgar A. Perkins, Samuel R. Artman.

Be it remembered that heretofore, to-wit: at the November Term, 1918, of said Court, on the 12th day of April, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Miller, Dailey and Thompson and Davis, Moore, Cooper, Royse and Bogart, its solicitors, and files its bill of complaint herein, in the words and figures following to-wit:

2 In the District Court of the United States for the District of Indiana.

No. —. In Equity.

LOWER VEIN COAL COMPANY, Plaintiff.

VS.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. Dresser, and Samuel R. Artman, as Members of Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, and Samuel R. Artman, Defendants.

*Bill of Complaint.*

To the Honorable Judges of the District Court of the United States for the District of Indiana:

The above named plaintiff brings this, its Bill of Complaint against the above named defendants, and each of them, and shows to this Honorable Court as follows:

1. That the plaintiff, Lower Vein Coal Company, is a corporation organized and existing under and by virtue of the laws of the State of Indiana, and is a resident and citizen of said State of Indiana.

2. That the defendant, Industrial Board of Indiana, is a Board created under and by virtue of an act of the General Assembly of the State of Indiana, approved March 8, 1915, known as "The Indiana Workmen's Compensation Act;" that the defendants, Edgar A. Perkins, Kenneth L. Dresser and Samuel E. Artman, are the duly appointed, qualified and acting members of said Industrial Board of Indiana.

3. Plaintiff avers that the matter in dispute in this cause exceeds exclusive of interest and costs the sum, or value of Three Thousand Dollars.

4. Plaintiff avers that at all times mentioned in this Bill it was engaged in the State of Indiana, in the business of mining and marketing coal; that during said time said plaintiff owned and operated two mines within the State of Indiana and had invested in said State of Indiana, during all that time a sum in excess of Five Hundred Thousand Dollars, and has employed in and about its said business, during all of said time, approximately five hundred men; that all of the men above referred to, as employed by the plaintiff, are employed in its said business in the State of Indiana; that the contracts of hiring, for all of said men, so employed by said plaintiff, were made by the plaintiff with its said employees, within the State of Indiana.

5. Plaintiff alleges that the General Assembly of the State of Indiana, for the year 1915, enacted a statute, which was approved March 8th, 1915, known as the "Indiana Workmen's Compensation Act," which was and is Chapter 106, of the Laws of the General Assembly of the State of Indiana, for the year 1915; that in the year 1917 the General Assembly of the State of Indiana amended certain sections of said act of 1915, by Chapters 63, 81 and 165 of the Acts of the General Assembly of the State of Indiana for 1917; that said Workmen's Compensation Act, as amended, has been continuously in force in the State of Indiana, since the — day of April, 1917, and is now in full force and effect; that a copy of said Workmen's Compensation Act of 1915, as amended by the General Assembly of the State of Indiana, for 1917, for the convenience of the Court, is hereto attached, marked "Exhibit A."

6. Plaintiff alleges that the General Assembly of the State of Indiana, for the year 1919, passed an act which is known as House Bill No. 110, being Chapter — of the Laws of the General Assembly of the State of Indiana, for the year 1919, attempting to amend Sections 5, 8, 9, 13, 14, 15, 18, 22, 23, 25, 31, 36, 37, 38, 39, 42, 43, 45, 46, 47, 48, 50, 51, 56, 58, 63, 65, 68, 69, 70, 73, 74, 75 and

5 76 of said Workmen's Compensation Act; that said amend-  
 atory act known as House Bill 110, being Chapter — of the  
 Laws of the General Assembly of the State of Indiana, was  
 and is in the words and figures following, to wit:

6 *House Bill No. 110.*

Act entitled An Act to amend sections 5, 8, 9, 13, 14, 15, 18, 22,  
 23, 25, 31, 37, 38, 39, 42, 43, 45, 46, 47, 48, 50, 51, 56, 58, 63,  
 65, 68, 69, 70, 73, and 76 of an act entitled "An Act to promote the  
 prevention of industrial accidents; to cause provision to be made for  
 adequate medical and surgical care for injured employees; to estab-  
 lish rates of compensation for personal injuries or death sustained  
 by employees in the course of employment; to provide methods of  
 insuring the payment of such compensation; to create an industrial  
 board for the administration of the act and to prescribe the powers  
 and duties of such board; to abolish the state bureau of inspection  
 and provide for the transfer to said industrial board certain rights,  
 powers and duties of said state bureau of inspection," approved  
 March 8, 1915.

Section 1. Be it enacted by the General Assembly of the State  
 of Indiana, That sections 5, 8, 9, 13, 14, 15, 18, 22, 23, 25, 31, 37,  
 38, 39, 42, 43, 45, 46, 47, 48, 50, 51, 56, 58, 63, 65, 68, 69, 70,  
 73, and 76 of the above entitled act, known as "The Indiana Work-  
 men's Compensation Act," be and the same are hereby amended to  
 read as follows:

Section 5. Every employer who accepts the compensation pro-  
 visions of this act shall insure the payment of compensation to his  
 employees and their dependents in the manner hereinafter provided  
 or procure from the industrial board a certificate authorizing  
 7 him to carry such risk without insurance, and, while such  
 insurance or such certificate remains in force, he or those  
 conducting his business shall be liable to any employee and his de-  
 pendents for personal injury or death, by accident arising out of and  
 in the course of the employment, only to the extent and in the man-  
 ner herein specified.

Section 8. No compensation shall be allowed for an injury or  
 death due to the employee's intentionally self-inflicted injury, his  
 intoxication, his commission of a felony or misdemeanor, his wilful  
 failure or refusal to use a safety appliance, his wilful failure or re-  
 fusel to obey a reasonable written or printed rule of the employer,  
 which has been posted in a conspicuous place, his wilful failure or  
 refusal to perform any statutory duty or to any other wilful miscon-  
 duct on his part. The burden of proof shall be on the defendant.

Section 9. This act, except section 67, shall not apply to casual  
 laborers, as defined in clause (b) of section 76, nor to farm or agri-  
 cultural employees, nor to domestic servants, nor to the employers

of such persons, unless such employees and their employers file with the industrial board their voluntary joint election to be so bound.

Section 13. Whenever an injury or death, for which compensation is payable under this act, shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee, or his dependents, in case of death, at his or their option, may claim compensation from the employer or proceed at law against such other person to recover damages or may proceed against both the employer and such other person at the same time, but he or they shall not collect from both; and, if compensation is awarded and accepted under this act, the employer, having paid compensation or having become liable therefor, may collect in his own name or in the name of the injured employee or, in the case of death, in the name of his dependents from the other person in whom legal liability for damages exists, the compensation paid or payable to the injured employee or his dependents.

Section 14. The state, any political division thereof, any municipal corporation, any corporation, partnership or person, contracting for the performance of any work without exacting from the contractor a certificate from the industrial board showing that such contractor has complied with section 68 of this act, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurse's charges and burial expenses on account of the injury or death of any employee of such contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

Any principal contractor, intermediate contractor, or subcontractor, who shall sub-let any contract for the performance of any work covered by such sub-contract.

That the state, any political division thereof, any municipal corporation, any corporation, partnership, person, principal contractor, intermediate contractor or sub-contractor, paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under the foregoing provisions of this section, may recover the amount paid from any person who, independently of such provisions would have been liable for the payment thereof.

Every claim, filed with the industrial board under this section, shall be instituted against all parties liable for payment, and said board, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

Section 15. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act.

Section 18. The provisions of this act, except sections 3, 4, 10, 11 and 12, shall apply to the state, to all the political divisions thereof, to all municipal corporations within the state, to

persons, partnerships and corporations engaged in mining coal, and to the employees thereof.

Section 22. Unless the employer or his representative shall have actual knowledge of the occurrence of any injury or death at the time thereof or shall acquire such knowledge afterward, the injured employee or his dependents, as soon as practicable after the injury or death resulting therefrom, shall give written notice to the employer of such injury or death.

Unless such notice is given or knowledge acquired within thirty days from the date of the injury or death, no compensation shall be paid until and from the date such notice is given or knowledge obtained. No lack of knowledge by the employer or his representative and no want, failure, defect or inaccuracy of the notice shall bar compensation, unless the employer shall show that he was prejudiced by such lack of knowledge or by such want, failure, defect or inaccuracy of the notice, and then only to the extent of such prejudice.

Section 23. The notice provided for in the preceding section shall state the name and address of the employee, the time, place, nature and cause of the injury or death, and shall be signed by the injured employee or by some one in his behalf or by one or more of the dependents in case of death, or by some person in their behalf. Said notice may be served personally upon the employer, or upon any foreman, superintendent or manager of the employer to whose orders the injured or deceased employee was required to conform or upon any agent of the employer upon whom a summons in civil action may be served under the laws of the state, or may be sent to the employer by registered letter, addressed to his last known residence or place of business.

Section 25. During the first thirty days after an injury the employer shall furnish or cause to be furnished, free of charge to the injured employee, an attending physician, for the treatment of his injuries, and in addition thereto such surgical, hospital and nurse's services and supplies as the attending physician or the industrial board may deem necessary.

And, during the whole or any part of the remainder of the period of disability or impairment resulting from the injury, the employer may continue to furnish such physicians, services and supplies. If, by reason of the nature of the injury or the process of recovery treatment is necessary for a longer period than thirty days, the industrial board may require the employer to furnish such treatment for an additional period, not exceeding thirty days. The refusal of the employee to accept such service and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of such refusal, unless in the opinion of the industrial board, the circumstances justify such refusal.

If, in an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital or nurse's services and supplies, as herein specified, or for other good reason,

a physician, other than that provided by the employer, treats the injured employee within the first thirty days, or necessary and proper surgical, hospital or nurse's services and supplies are procured within said period, the reasonable cost of such service and supplies, subject to the approval of the industrial board, shall be paid by the employer.

Section 31. For injuries in the following schedule the employee shall receive, in lieu of all other compensation on account of said injuries, a weekly compensation of fifty-five per cent of his average weekly wages for the periods stated, for said injuries, respectively, to wit: (a) Amputations: For the loss by separation, of the thumb sixty weeks, of the index finger forty weeks, of the second finger thirty-five weeks, of the third or ring finger thirty weeks, of the fourth or little finger twenty weeks, of the hand by separation below the elbow joint two hundred weeks, of the arm above the elbow joint two hundred and fifty weeks, of the big toe sixty weeks, of the second toe thirty weeks, of the third toe twenty weeks, of the fourth toe fifteen weeks, of the fifth or little toe ten weeks,

13 of the foot below the knee joint one hundred and fifty weeks, and of the leg above the knee joint two hundred weeks.

The loss of more than one phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two phalanges of a finger shall be considered as the loss of the entire finger. That the loss of not more than one phalange of a thumb or toe shall be considered as the loss of one half of the thumb or toe and compensation shall be paid for one half of the period for the loss of the entire thumb or toe. That the loss of not more than two phalanges of a finger shall be considered as the loss of one half the finger and compensation shall be paid for one half of the period for the loss of the entire finger.

(b) Loss of use: The total, permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss, by separation, of the arm, hand, thumb, finger, leg, foot, toe, or phalange and compensation shall be paid for the same period as for the loss thereof by separation.

(c) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe or phalange.

(d) For injuries resulting in total permanent disability  
14 five hundred weeks.

(e) For the loss of both hands, or both feet, or the sight of both eyes or any two of such losses in the same accident five hundred weeks.

(f) For the permanent loss of the sight of an eye or its reduction to one tenth of normal vision with glasses one hundred and fifty weeks, and for any other permanent reduction of the sight of any

eye compensation shall be paid for a period proportionate to the degree of such permanent reduction.

(g) For the permanent and complete loss of hearing one hundred weeks.

(h) In all other cases of permanent partial impairment compensation proportionate to the degree of such permanent partial impairment, in the discretion of the industrial board, not exceeding five hundred weeks.

(i) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the industrial board, not exceeding two hundred weeks.

(j) For the injuries causing temporary total disability for work there shall be paid to the injured employee during such total disability, but not including the first seven calendar days thereof a weekly compensation equal to 55% of his average weekly wages for a period not to exceed five hundred weeks.

15 (k) For injuries causing temporary partial disability for work compensation shall be paid to the injured employee during such disability, but not including the first seven calendar days a weekly compensation equal to 55% of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks. In case the partial disability begins after the period of temporary total disability the latter period shall be deducted from the maximum period allowed for partial disability.

(l) No compensation shall be allowed on account injuries producing only temporary total disability to work or temporary partial disability to work for the first seven calendar days of disability resulting from such injuries except the benefits provided for in section 25; but if disability extends beyond that period compensation shall commence with the beginning of the eight days of such disability.

Section 37. When death results from an injury within three hundred weeks, there shall be paid a weekly compensation equal to fifty-five per cent of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased, on account of the injury in

16 equal shares, to all dependents of the employee wholly dependent upon him for support at the time of his death. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the weekly compensation to those so dependent shall be in the same proportion to the weekly compensation of persons wholly dependent as the average amount contributed weekly by the deceased to such partial dependent bears to his average weekly wages at the time of the injury.

Section 38. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee.



(a) A wife upon her husband with whom she is living at the time of his death or upon whom the laws of the state impose the obligation of her support at such time.

(b) A husband, who is both physically and financially incapable of self-support, upon his wife with whom he is living at the time of his death.

(c) A child under the age of eighteen years upon the parent with whom he or she is living at the time of the death of such parent.

(d) A child under eighteen years upon a parent with whom he or she may not be living at the time of the death of such parent, but upon whom, at such time, the laws of the state impose the obligation to support such child.

(e) A child over the age of eighteen years who is either physically or mentally incapacitated from earning his or her own support, upon a parent with whom he or she is living at the time of the death of such parent; or upon whom the laws of the state at such time impose the obligation of the support of such child.

As used in this section, the term "child" shall include stepchildren, posthumous children, legally adopted children and acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases, the question of total dependency shall be determined in accordance with the fact, as the fact may be at the time of the death, and the question of partial dependency shall be determined in like manner as of the date of the injury. If there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent shall receive not part thereof.

If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among the partial dependents according to the relative extent of their dependency.

The dependency of a widow, widower or child, shall terminate with his or her marriage subsequent to the death of the employee.

The dependence of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of eighteen years of age.

18 Section 39. In all cases of the death of an employee from an injury by an accident arising out of and in the course of his employment under such circumstances that the employee would have been entitled to compensation, if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding one hundred dollars.

Section 42. When so provided in the compensation agreement or in the award of the industrial board, compensation may be paid semi-monthly, or monthly, instead of weekly.

Section 43. After the lapse of twenty-six compensation weeks and the payment in full of twenty-six weeks' compensation, the remainder of the compensation, in unusual cases, upon the agreement of the employer and the employee or his dependents, and the approval of the industrial board, may be redeemed, in whole or in part, by the cash payment, in a lump sum, of the commutable value of the installments to be so redeemed.

The board may, at any time, in the case of permanently disabling injuries of a minor, require that he be compensated by the cash payment in a lump sum of the commutable value of the unredeemed installments of the compensation to which he is entitled.

In all such cases, the commutable value of the future, unpaid installments of compensation shall be the present value thereof  
19 at the rate of three per cent interest compounded annually.

Section 45. The power and jurisdiction of the industrial board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award, ending, lessening, continuing or extending the payments, previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this act.

Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

The board shall not make any such modification upon its own motion nor shall any application therefor be filed by either party after the expiration of one year from the termination of the compensation period fixed in the original award, made either by an agreement or upon hearing. The board may at any time correct any clerical error or mistake of fact in any finding or award.

Section 46. When the aggregate payments of compensation, awarded by agreement or upon hearing to an employee or dependent under eighteen years of age, do not exceed one hundred dollars, the payment thereof may be made directly to such employee or  
20 dependent, except when the industrial board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen years of age, exceed one hundred dollars, the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or to a parent upon the order of the industrial board. The payment of compensation, due to any person eighteen years of age or over, may be made directly to such person.

Section 47. If an injured employee or a dependent is mentally incompetent or a minor at the time when any right or privilege accrues to him under this act, his guardian or trustee may, in his behalf, claim and exercise such right or privilege.

Section 48. No limitation of time provided in this act shall run against any person who is mentally incompetent or a minor, so long as he has no guardian or trustee.

Section 50. There is hereby created the industrial board of Indiana, which shall consist of five members, two of whom shall be attorneys, and not more than three of whom shall be of the same political party, appointed by the governor, one of whom he shall designate as chairman.

The chairman of said board shall be an attorney of recognized qualifications.

Each member of the board shall hold his office for four years, and until his successor is appointed and qualified, unless removed by the governor, except that the three present members of said board shall continue to serve for and during the terms for which they have been appointed, unless removed as hereinafter provided, and of the two additional members hereby provided for, one shall be appointed for two years and one for four years. Thereafter, upon the expiration of the term of any member, the governor shall appoint his successor for the full term of four years.

Each member of the board shall devote his entire time to the discharge of the duties of his office and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of his duties as such member.

Any member of said board may be removed by the governor at any time for incompetency, neglect of duty, misconduct in office or other good cause, to be stated in writing in the order of removal.

In case of a vacancy in the membership of said board, the governor shall appoint for the unexpired term.

Section 51. The annual salary of each member of the board shall be four thousand dollars.

The board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The secretary shall have the authority to administer oaths and issue subpoenas.

The board, subject to the approval of the governor, may employ and fix the compensation of such clerical and other assistants as it may deem necessary. The clerical and other assistants shall be employed with special reference to their qualifications for the discharge of the duties assigned to them, and without regard to their political affiliations, except that not more than sixty per cent of such employees shall be of the same political party, provided that none of the present employees shall be discharged merely to establish such political proportion.

The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the board before payment is made.

All salaries and expenses of the board shall be audited and paid

out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

Section 56. The board shall prepare, cause to be printed, and, upon request, furnish free of charge to any employer or employee such blank forms and literature as it shall deem requisite to facilitate and promote the efficient administration of this act. The accident reports and reports of attending physicians shall be the private records of the board, which shall be open to the inspection of the employer, the employee and their legal representatives, but not to the public, unless, in the opinion of the board, the public interest shall so require.

That the board shall make to the governor annually, on or before the first day of December, a report of its work during the preceding fiscal year, in such form as it may determine, with the approval of the governor. In order to prevent the accumulation of unnecessary and useless files of papers, the board, in its discretion, may destroy all papers which have been on file for more than two years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one year has elapsed since the termination of the compensation period, as fixed by such board.

Section 58. If the employer and the injured employee or his dependents fail to reach an agreement in regard to the compensation payable under this act, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the industrial board, and then disagree as to the continuance of payments under such agreement, because of a change in conditions since the making of such agreement, either party may make an application, to the industrial board, for the determination of the matters in dispute.

Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties in the manner prescribed by the board of the time and place of hearing. The hearing of all claims for compensation, on account of injuries occurring within the state, shall be held in the county in which the injury occurred, except when the parties consent to a hearing elsewhere.

Section 63. In all proceedings before the industrial board or in a court under this act, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court.

Section 65. The fees of attorneys and physicians and the charges of nurses and hospitals for services under this act shall be subject to the approval of the industrial board.

When any claimant for compensation is represented by an attorney in the prosecution of his claim, the industrial board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fee. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the

attorney out of the award the fee so fixed, and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award. The industrial board may withhold the approval of the fees of the attending physician in any case until he shall file report with the industrial board on the form prescribed by such board.

25      Section 68. Every employer of the state, except agricultural employers and the employers of domestic servants, shall register annually on or before the first day of September with the industrial board and procure the certificate of said board showing such registration. Each such employer shall file an application with the industrial board, annually on or before the first day of September, for registration and a certificate thereof, upon a form therefor, prescribed by the industrial board and furnished by it, in which the employer shall state the following facts, to wit: The correct name of the employer, and, if a partnership, both the firm name and the names of the partners. The postoffice address of the employer, and when a partnership, the postoffice address of each partner; the nature and location of the business in which the employer is engaged; the number of employees; the sex of employees and the number of each sex, when both sexes are employed. Any employer failing to so file such application with the industrial board and procure a certificate of registration shall be fined not less than ten nor more than one hundred dollars.

The industrial board shall keep a registry by cards of the employers of the state, by counties, arranged in alphabetical order as to the names of the counties and the names of the employers.

26      Every employer under this act shall either insure or keep insured his liability hereunder in same corporation, association or organization authorized to transact the business of workmen's compensation insurance in this state, or shall furnish to the industrial board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the board may in its discretion require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Section 69. Every employer who does not exempt himself from the compensation provisions of this act and who does not procure from the industrial board a certificate of his financial ability to pay compensation direct, without insurance, shall, within ten days after this act takes effect, file with the industrial board, in the form prescribed by it, and thereafter within ten days after the termination of his insurance by expiration or cancellation, evidence of his compliance with the insurance provisions of section 68 hereof and all others relating to the insurance of his liability under this act.

That any employer hereafter coming under the compensation provisions hereof shall in like manner file like evidence of such compliance on his part.

If such employer refuses or neglects to comply with these provisions he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than  
 27 ten dollars nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided for in section 10.

Section 70. Whenever an employer has complied with the provisions of section 68, relating to self-insurance, the industrial board shall issue to such employer a certificate which shall remain in force for a period fixed by the board, but the board may upon at least ten days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the board may grant a new certificate to the employer upon his petition, and satisfactory proof of his financial ability.

Section 73. No insurer shall enter into or issue any policy of insurance under this act until its policy form shall have been submitted to and approved by the industrial board. The industrial board shall not approve the policy form of any insurance company until such company shall file with it the certificate of the auditor of state showing that such company is authorized to transact the business of workmen's compensation insurance in the state. That the filing of a policy form by any insurance company or reciprocal insurance association with the industrial board for approval shall constitute on the part of such company or association a conclusive  
 28 sive and unqualified acceptance of each and all of the provisions of this act, and an agreement by it to be bound thereby.

All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this act, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured.

Any provision in any such policy attempting to limit or modify the liability of the company or association issuing the same shall be wholly void.

Every policy of any such company or association must contain the following provisions:

(a) The insurer hereby assumes in full all the obligations to pay physician's fees, nurse's charges, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under the provisions of "The Indiana Workmen's Compensation Act."

(b) That this policy is made subject to the provisions of "The Indiana Workmen's Compensation Act" and the provisions of said act relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for said employees, the acceptance of such liability by the insured, the adjustment, trial and ad-

judication of claims for such physician's fees, nurse's charges,  
29 hospital services, hospital supplies, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are and shall be a part of this policy contract as fully and completely as if written herein.

(c) That, as between this insurer and the employee, notice to or knowledge of the occurrence of the injury on the part of the insured (the employer) shall be notice or knowledge thereof, as the case may be, on the part of this insurer; that the jurisdiction of the insured (the employer) for the purpose of "The Indiana Workmen's Compensation Act," shall be the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to the awards, judgments and decrees rendered against the insured (the employer) under said act.

(d) That this insurer will promptly pay to the person entitled to same, all benefits conferred by "The Indiana Workmen's Compensation Act," including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses and all installments of compensation or death benefits that may be awarded or agreed upon under said act; that the obligation of this insurer shall not be affected by any default of the insured (the employer) after the injury or by any default in the giving of any notice required by this policy, or otherwise; that this policy is and shall be construed to be a direct  
30 promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial, compensation or death benefits, and shall be enforceable in the name of such person.

(e) That any termination of this policy, either by cancelation or expiration, shall not be effective as to the employees of the insured covered hereby until ten days after written notice of such termination has been received by the industrial board of Indiana, at its office in Indianapolis, Indiana.

That all claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees or burial expenses may be made directly against either the employer or the insurer or both, and the award of the industrial board may be made against either the employer or the insurer or both.

That, if any insurer shall fail or refuse to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail or refuse to comply with any provision of this act, the industrial board shall revoke the approval of its policy form, and shall not accept any further proofs of insurance from it until it shall have paid said award or judgment or complied with the violated provision of the act, and shall have re-submitted its policy form and received the approval thereof by the industrial board.

31 Section 76. In this act unless the context otherwise requires:

(a) "Employer" shall include the state, any political division thereof, any municipal corporation within the state, any individual,



firm, association or corporation or the receiver or trustee of the same or the legal representative of a deceased person, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor, lawfully in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost seven or more calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks, and parts thereof, remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

(d) "Injury" and "personal injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.



33 Sec. 2. That all laws and parts of laws in conflict with the foregoing provisions are hereby repealed.

JESSIE E. ESCHBACH,  
*Speaker of the House of Representatives.*

Approved Mar. 10, 1919.

JAMES P. GOODRICH,  
*Governor of the State of Indiana.*

EDGAR D. BUSH,  
*President of the Senate.*

Filed Mar. 10, 1919. William A. Roach, Sec'y of State.

34 That said amendatory act above set out, after it had been so passed by the General Assembly of the State of Indiana was on the — day of March, 1919, duly signed and approved by the Honorable James P. Goodrich, as Governor of the State of Indiana, and that said amendatory act, heretofore set out, thereupon became and now is a law of the State of Indiana, to take effect when the Acts are distributed, if valid and constitutional.

Plaintiff alleges that all of the laws passed by said General Assembly of the State of Indiana, for the year 1919, are now in the hands of the State Board of Printing of the State of Indiana, which is preparing printed copies of the Session Laws of the State of Indiana, for the year 1919.

Plaintiff further avers that in pursuance of the constitution and statutes of the State of Indiana said Session Laws, including said amendatory act, known as House Bill No. 110, will be printed and distributed to the clerks of the several Circuit Courts of the State of Indiana, and upon receipt, by the Governor, of information from all of said clerks of the Circuit Courts of the State of Indiana, that said copies of said Session Laws have been received by said clerks,

35 said Governor will issue a proclamation that each and all of said laws passed by the General Assembly of the State of Indiana, for the year 1919, including said amendatory act known as House Bill No. 110, are in full force and effect, and said Acts and each of them will be fully consummated within three weeks from this date, as plaintiff is informed and believes, at which time said amendatory act known as House Bill No. 110, will become effective and operative, if a valid law.

7. Plaintiff further avers that the Indiana Workmen's Compensation Act of 1915, as amended by the General Assembly of the State of Indiana, for 1919, was a permissive act, and that all employers, and all employees had the right to elect not to come within the provisions of said law, and that an employer so electing not to come within the provisions of said act, was not required or compelled to pay compensation to its employees for personal injury to such employee, but could only be required to respond in an action at law, where such employer had been guilty of negligence; that plaintiff herein did, on the 28th day of July, 1915, elect to reject the provisions of said Indiana Work-

men's Compensation Act of 1915, as amended in 1917, and did so reject said act, and took all steps required to be taken by it, under said law, for the purpose of effectuating such rejection, which said rejection was in writing and was in words and following, to-wit:

36 No. —.

5M-11-12-17.

Industrial Board of Indiana.

(Workmen's Compensation.)

Form No. 1.

*Employer's Notice of Rejection of the Provisions of "the Indiana Workmen's Compensation Act."*

July 28th, 1915.

To the Employees of the Undersigned and the Industrial Board of Indiana:

You and each of you are hereby notified that the undersigned employer, being engaged in a business or occupation comprehended within the scope and meaning of an Act of the General Assembly of the State of Indiana, approved March 8, 1915, and known as "The Indiana Workmen's Compensation Act" and having employees engaged in said business, does hereby elect to reject the provisions of said act and to refuse to pay compensation for injuries to or the death of said employees, as in said Act provided.

West Terre Haute, Indiana.  
Post Office Address of Employer.

LOWER VEIN COAL CO.,  
JAMES LUTHER,

*President.*

F. C. FISHBECK,

*Sec.*

*Signature of Employer.*

STATE OF INDIANA,  
County of Vigo, ss:

37 The undersigned, being duly sworn, deposes and says that a true, correct and verbatim copy of the foregoing notice was on the 28th day of July 1915, posted at

Mine No. 1, also office at Mine No. 1.

" " 2 " " " " 2

GEO. H. RICHARDS,

*Signature of Affiant.*

Subscribed and sworn to before me, this 28 day of July, 1915.

[SEAL.]

BURWELL W. COLE,  
Notary Public.

My commission expires on the 17 day of March, 1919.

(On the back of Notice)

### Instructions.

1. In case the employer is a corporation, the corporate name should be signed, and the signatures of the president and secretary should be affixed.

2. When an employer elects to give the above notice, it must be served by posting in a conspicuous place in the plant, shop, office, room or place where the employe is employed, or by serving it upon him personally.

3. When the above notice is given, a correct copy thereof together with proof of its service must be filed with the Industrial Board.

4. Such notice must be given either at least thirty days prior to an accident resulting in injury or death or at the time of the employment.

5. When the employe is a miner, the notice must be given to his parent or guardian.

6. If the employer is a partnership, the firm name should be signed and the names of the individual partners should be stated.

No. —.

Form No. 1.

### *Employer's Notice of Rejection of Compensation Act.*

.....  
.....  
Name of Employer.

.....  
.....  
Post Office Address of Employer.

Filed with the Industrial Board of Indiana on the — day of —, 19—.

.....  
.....  
Secretary of the Board.

.....  
.....  
Wm. B. Burford, Printer, Indianapolis.

39 That at all times since said written rejection above set out was filed with the Industrial Board of Indiana, by the plaintiff, in accordance with the provisions of said act, it has continued

to be in full force and effect, and has never been withdrawn by the plaintiff herein, and that the plaintiff is not now subject to the terms and provisions of said Indiana Workmen's Compensation Act of 1915, as amended in 1917; that on the 9th day of April, 1919, the plaintiff served on said Industrial Board of Indiana, a notice in writing, executed by the plaintiff, of which the following is a copy:

"To the Industrial Board of the State of Indiana:

You are hereby notified that the undersigned Lower Vein Coal Company, being engaged in a business or occupation comprehended within the scope and meaning of an Act of the General Assembly of the State of Indiana, approved March 8th, 1915, and known as "Indiana Workmen's Compensation Act," and amendments thereto passed at the 70th regular session of the General Assembly of the State of Indiana, begun on the 4th day of January, 1917, and having employees engaged in said business, elects to reject the provision of said Act and refuses to pay compensation for injuries or the death of said employees as in said Act provided.

And you are hereby further notified that said Lower Vein Coal Company refuses to comply with amendments to said Act 40 passed by the 71st Regular Session of the General Assembly of the State of Indiana, whereby it is attempting to make said "Indiana Workmen's Compensation Act" compulsory upon persons, firms and corporations engaged in the business of mining coal, for the reason that said amendments passed by said 71st Session of the General Assembly of the State of Indiana, attempting to make said Act compulsory, is unconstitutional and void, and deprives said Lower Vein Coal Company of its property without due process of law and without compensation and deprives said Lower Vein Coal Company of the equal protection of law, in violation of the provisions of the constitutions of the United States and of the State of Indiana.

LOWER VEIN COAL COMPANY,  
By F. W. RICHARDS,  
Vice President.

Postoffice Address: Grand Opera House Building, Terre Haute, Indiana."

8. Plaintiff further avers that said Industrial Board of Indiana and each defendant hereto claims that said amendatory act of 1919, hereinbefore set out, is a valid and effective enactment, and particularly that Section 18 of said original Workmen's Compensation Act of 1915, as amended by said Act of 1919, compels and requires all coal mining companies in the State of Indiana, including the plaintiff, to come under the provisions of said law, and the jurisdiction of said Industrial Board of Indiana; and that said Industrial Board of Indiana and each defendant hereto asserts that the compulsory feature of Section 18 of said Act, is a 41 valid law, and assert its and their intention to assume jurisdiction in all personal injury cases, and to hear complaints and render awards,

and intends, unless enjoined by this Court, to take jurisdiction of all claims filed by employes of persons, partnerships and corporations engaged in mining coal, including the employes of this plaintiff, and to make awards in such cases, in favor of such employes and against the employers of such employes, including this plaintiff, notwithstanding the fact that this plaintiff has rejected the provisions of said Workmen's Compensation Act, and is not bound thereby; that it is the intention of said Industrial board of Indiana, and said members thereof to enforce, and unless enjoined by this Court it and they will enforce all of the provisions of said Workmen's Compensation Act, as amended by said amendatory act, known as House Bill 110, including the provisions of said Section 18, as so amended.

9. That in the prosecution of plaintiff's business in the State of Indiana, in the mining and marketing of coal, with approximately Five Hundred employes engaged therein, as heretofore averred, there have occurred from time to time in the past, and will, in the future, occur accidents to plaintiff's employes, resulting, without any negligence or fault on the part of the plaintiff, in injury to  
42 said employes while engaged in the performance of their duties as such employes, and in the line of their duties, and in the course of their employment; that from time to time after the occurrence of such accidents in the future, plaintiff alleges on information and belief that claims for compensation will be filed by said injured employes, or their dependants, as fixed by said Workmen's Compensation Act, before said Industrial Board of Indiana, and that compensation will be awarded in practically all of said causes, by said Board, against this plaintiff.

Plaintiff alleges, on information and belief, that during the remainder of the year 1919, there will be more than twenty-five accidents to the employes of plaintiff, in the course of their employment, for which compensation will be claimed by said injured employes, or their dependants, before said Industrial Board of Indiana, which injuries will be of a kind and character entitling said injured employes, or their dependants, to compensation under said law, if, under the law, plaintiff is required to pay such compensation in lieu of damages; that the awards which will be made in such cases, against this plaintiff, and in favor of its injured employes, or their dependants, will exceed in the remaining part of the year 1919, the sum of Twenty-five Thousand dollars, and that this plaintiff will,  
43 unless the defendants are restrained and enjoined by this Court, be compelled to defend, before said Industrial Board of Indiana, more than twenty-five separate claims for compensation, each of which said claims will involve many questions of law and fact, and a separate trial and determination before said Industrial Board of Indiana.

That unless said Industrial Board of Indiana is restrained and enjoined from enforcing the provisions of Section 18 of said Workmen's Compensation Act, as amended, plaintiff will be compelled to employ attorneys to defend the large number of suits, and applications for awards, heretofore referred to, and will be compelled to

expend for attorney's fees and other expenses incident to said multiplicity of actions a sum in excess of Five Thousand dollars, during the remainder of the year 1919.

10. Plaintiff further avers that under and by virtue of the terms and provisions of the said Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of the State of Indiana, for 1919, the Workmen's Compensation Act is now mandatory and compulsory, if said law be valid, upon the State of Indiana, its political divisions, and all municipal corporations within the State, and upon persons, partnerships and corporations engaged in mining coal, and the employees thereof, and is optional and permissive as to all other employers and employees within the State of Indiana; that persons, partnerships and corporations engaged

44 in mining coal, are the sole and only private employers and corporations who are compelled, under said Section 18, as amended, to operate under the provisions of said Workmen's Compensation Act.

Plaintiff avers that the business of mining coal is a hazardous one, but alleges that there are many other businesses conducted within the State of Indiana, in which thousands of men are employed annually, which are more hazardous than the business of mining coal, in which the plaintiff is engaged, and many other businesses in which thousands of men are employed annually, in the State of Indiana which are equally as hazardous as the business of mining coal; that for the year ending October 1, 1917, the following number of employees were injured in the respective businesses, hereinafter set forth, to-wit:

Steam railroads .....	3,734
Iron and Steel Industries.....	3,446
Machinery and Machine Shops.....	2,831
Auto Manufacturers and repairing.....	2,196
Coal Mining.....	2,162
General Contractors.....	1,117
Furniture Manufacturing.....	1,050
Car Manufacturing and repairing.....	1,009
Foundries .....	997
Glass manufacturing.....	949

45 That for the year ending October 1st, 1918, the following number of employees were injured in the respective businesses hereinafter set forth, to-wit:

Steam railroads.....	3,812
Iron and Steel Industries.....	3,577
Machinery and Machine Shops.....	2,748
Auto Manufacturing and repairing.....	3,206
Coal Mining.....	2,170
General Contractors.....	1,892
Furniture Manufacturing.....	1,421
Car Manufacturing and repairing.....	1,489
Foundries .....	1,987
Glass manufacturing.....	972

That the figures above set forth are taken from statistical information furnished by the several employers of the State of Indiana, to the defendant, Industrial Board of Indiana, and are compiled from reports required to be made by all employers in the State of Indiana, to the Inspection Department of the State of Indiana.

That said statistics above set forth have been continuously, since October 1st, 1917, a part of the public records of the State of Indiana, and available to all persons.

11. Plaintiff avers that said Section 18, of the Workmen's  
46 Compensation Act of Indiana, as amended by the General  
Assembly of the State of Indiana, for the year 1919, known  
as House Bill No. 110, is unconstitutional and void for the following  
reasons, and each of them, to-wit:

(1) It violates the provisions of the Fourteenth Amendment of the Constitution of the United States, in that it deprives the plaintiff of its property without due process of law, and denies to the plaintiff the equal protection of the laws.

Said Act is an unwarranted abridgement of the rights and privileges guaranteed to the plaintiff by said Fourteenth Amendment of the Constitution of the United States, in the following particulars, and each of them, to-wit:

(a) That the classification attempted in said Act is arbitrary and discriminatory, and is not based upon any just or reasonable ground, but that the General Assembly has passed a law arbitrarily and without any fair reason, making the Workmen's Compensation Act compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal, and permissive, or voluntary, as to all other businesses within the State of Indiana.

(b) It denies the plaintiff the equal protection of the laws, because it is not equal or uniform in its operation, but singles out the line of business in which the plaintiff is engaged, the same being a lawful business, and impose onerous burdens upon such business,  
and upon the plaintiff, and upon others engaged in the same  
47 business as the plaintiff, without imposing like burdens upon  
others engaged in similar business within the State of  
Indiana and upon others whose businesses are equally hazardous,  
and more hazardous than the business of the plaintiff.

(c) That said Act deprives the plaintiff of its property without due process of law, in that it imposes burdens upon the plaintiff, not imposed upon other persons, partnerships and corporations similarly situated and engaged in business of equal, or greater hazard.

(d) That said Act, in its provisions, is partial, unreasonable, oppressive and unequal.

(e) That the classification fixed by said law rests upon no sound or reasonable basis, but is wholly arbitrary.

(2) That said Act is invalid because it violates Section 23 of Article 1 of the Bill of Rights of the Constitution of the State of

Indiana, which provides that "The General Assembly shall not grant to any citizen, or class of citizens, privileges and immunities which, upon the same terms, shall not equally belong to all citizens," for the following reasons, and each of them, to wit:

(a) Because the said Act grants to other citizens, and classes of citizens, the privilege and immunity of not coming under the provisions of said law, which it does not grant upon the same  
48 terms and equally to the plaintiff, and others engaged in the business of mining coal within the State of Indiana.

(b) Said act is discriminatory against the plaintiff, and all other persons, partnerships and corporations engaged in the business of mining coal, which is a lawful business, and in favor of other equally hazardous and dangerous business.

(c) There is no basis for the classification fixed by said Act, and said classification is unjust, oppressive and discriminatory.

(3) That said Act is invalid because it violates Section 21 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana, which provides that "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered," for the following reasons, and each of them, to wit:

(a) Because plaintiff's property would be taken by awards made by the Industrial Board of Indiana, where there was no negligence, or fault upon the part of the plaintiff, and other persons, firms and corporations engaged in businesses equally, or more hazard-  
49 ous, would not be subjected to the same liability.

(b) Because the private property of this plaintiff would be taken by virtue of the awards of the Industrial Board of Indiana, as heretofore averred, without any negligence on the part of this plaintiff, and in disregard of the question as to whether or not this plaintiff was negligent for the alleged public purpose of protecting the State of Indiana, and without compensation to the plaintiff.

13. Plaintiff further avers that unless an interlocutory injunction is granted, after notice to the Governor of Indiana, the Attorney General of Indiana, and the several defendants named herein, and upon hearing, plaintiff will be compelled to defend innumerable applications for compensation, before said Industrial Board of Indiana, to its irreparable loss and injury, and plaintiff will not be enabled to prosecute its business of mining and marketing coal within the State of Indiana, without exposing itself to numerous and repeated claims for compensation; that if awards should be made by said Industrial Board of Indiana, and plaintiff should be compelled to pay the same, and if this Act should thereafter be declared invalid, plaintiff would be required to not merely pay said awards so made by said Industrial Board of Indiana, but, later, would be compelled to de-



fend numerous actions at law, to recover damages for such personal injury.

50 Inasmuch, therefore, as plaintiff is without adequate remedy in the premises, by the strict rules of common law, and can obtain relief only in a court of equity, where matters and things of the kind and character herein alleged, are properly cognizable and relievable, and to the end that plaintiff may have the relief that can be obtained only in a court of equity, plaintiff prays, as follows, to wit:

(1) That writs of subpoena be issued to said defendants, and each of them, requiring them, and each of them, to answer this Bill of Complaint, fully and truthfully, but not under oath, an answer under oath being hereby expressly waived.

(2) That each and all of said defendants, and their, and each of their successors in office, be restrained and enjoined, after notice to them, and to the Governor and Attorney General of Indiana, and upon hearing from enforcing in any manner, Section 18 of the Workmen's Compensation Act of Indiana, as amended by the General Assembly of the State of Indiana, for 1919, and from asserting that plaintiff is compelled to operated under said Workmen's Compensation Action, and from hearing any claim for compensation, asserted by any employe of the plaintiff, so long as plaintiff elects not to come within the provisions of said Act, and from making any  
51 award to any injured employe of plaintiff, or his, or her dependants, during such time, and from doing any other act or thing prejudicial to the rights of the plaintiff, so long as it elects not to be bound by said Compensation Act.

(3) That upon the final hearing of this cause, said Section 18, as amended, be declared unconstitutional and void, as violative of the Constitution of the United States and of the Constitution of the State of Indiana, and that a perpetual injunction be issued, restraining and enjoining the enforcement thereof, by the defendants, and each of them, and their, and each of their successors in office, and all other persons, and for such other and further relief in the premises, as may be required by equity and good conscience.

LOWER VEIN COAL COMPANY,

By F. W. RICHARDS,

*Its Vice President.*

DAVIS, MOORE, COOPER, ROYSE &  
BOGART,

MILLER, DAILEY & THOMPSON,  
*Solicitors for Plaintiff.*

Attest:

FRANK J. FISBECK,

*Secretary.*

W. H. THOMPSON,

*Of Counsel.*

52      **STATE OF INDIANA,**  
*County of Marion, ss:*

F. W. Richards, being first duly sworn, upon his oath deposes and says that he is the duly qualified and acting Vice-President of the plaintiff in this case; that he has read over the foregoing Bill of Complaint, and knows the contents thereof, and that the allegations therein contained are true, except as to matters therein stated to be alleged on information and belief, and that as to such matters he believes them to be true; that he makes this affidavit for and on behalf of the plaintiff, and is authorized so to do.

F. W. RICHARDS.

Subscribed and sworn to before me, Noble C. Butler, Clerk of the District Court of the United States, for the District of Indiana.

FRANK J. CRAWFORD,

[SEAL.]

Clerk.

My Commission expires August 20, 1921.

53      "EXHIBIT A."

Workmen's Compensation Act.—1. That this act shall be known as "The Indiana Workmen's Compensation Act."

Acceptance of act.—2. From and after the taking effect of this act, every employer and every employe, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby; unless he shall have given prior to any accident resulting in injury or death notice to the contrary in the manner herein provided. This act shall not apply to railroad employes engaged in train service.

Exceptions by notice.—3. Either an employer or employe who has excepted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the industrial board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employe is employed, or by serving it personally upon him; and shall be given by the employe by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving

it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the state.

A copy of notice in prescribed form shall also be filed with the industrial board.

Contract of service continuance.—4. Every contract of service between any employer and employe covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall, after the act has taken effect, be presumed to continue: and every such contract made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act; unless either party shall give notice, as provided in section 3, to the other party to such contract that the provisions of this act other than sections 10, 11 and 67 are not intended to apply.

A like presumption shall exist equally in the case of all minors unless notice of the same character be given by or to the parent or guardian of the minor.

Payment of compensation, insurance.—5. Every employer who accepts the compensation provisions of this act shall insure the payment of compensation to his employes in the manner hereinafter provided, and while such insurance remains in force he or those conducting his business shall only be liable to any employe for personal injury or death by accident to the extent and in the manner herein specified.

Rights and remedies.—6. The rights and remedies herein granted to an employe subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employe, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury or death.

54 Parties not relieved from penalty.—7. Nothing in this act shall be construed to relieve any employer or employe from penalty for failure or neglect to perform any statutory duty.

Wilful misconduct, self-afflicted injuries.—8. No compensation shall be allowed for an injury or death due to the employe's wilful misconduct, including intentional self-afflicted injury, intoxication, and wilful failure or refusal to use a safety appliance or perform a duty required by the statute.

The burden of proof shall be on the defendant employer.

Class of laborers not applicable.—9. This act except section 67 shall not apply to casual laborers, to farm or agricultural laborers and to domestic servants, not to employers of such persons; unless such employes and their employers voluntarily elect in the manner hereinafter specified to be bound by this act.

Employers exempt, rights to defend.—10. Every employer who elects not to operate under this act shall not in any suit at law by an employe to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

(a) That the employe was negligent.

(b) That the injury was caused by the negligence of a fellow employe:

(c) That the employe has assumed the risk of the injury.

Common law employes exempt.—11. Every employe who elects not to operate under this act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

Liability of employer.—12. When both the employer and employe elect not to operate under this act, the liability of the employer shall be the same as though he alone had rejected the terms of this act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common law defenses cited in section 11.

Person other than Employer, liability.—13. Whenever an injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employe may at his option either claim compensation or proceed at law against such other person to recover damages or proceed against both the employer and such other person, but he shall not collect from both; and if compensation is awarded under this act the employer having paid the compensation or having become liable therefor, may collect in his own name or that of the injured employe from the other person in whom legal liability for damages exist, the indemnity paid or payable to the injured employe.

Sub-Contractors, Liability.—14. A principal, intermediate or sub-contractor shall be liable for compensation to any employe injured while in the employ of any one of his sub-contractors and engaged upon the subject matter of the contract, to the same extent as the immediate employer.

Any principal, intermediate, or sub-contractor who shall pay compensation under the foregoing provisions may recover the amount paid from any person, who independently of this section would have been liable to pay compensation to the injured employe.

Every claim for compensation under this section shall in the first instance be presented to and instituted against the immediate employer, but such proceedings shall not constitute a waiver of the employe's rights to recover compensation under this act from the principal or intermediate contractor, provided that the collection of full compensation from one employer shall bar recovery by the employe against any others, nor shall he collect from all a total compensation in excess of the amount for which any of the said contractors is liable.

This section shall apply only in cases where the injury occurred

on, in or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under his control or management.

Employer not entitled to relief by contract.—15. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act except as herein provided.

Compensation Preferred Claim.—16. All rights of compensation granted by this act shall have the same preference or priority for the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Claims not assignable.—17. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Provisions of act, jurisdiction.—18. The provisions of this act except sections 3, 4, 10, 11, and 12 shall apply to the state and any municipal corporations within the state or any political division thereof, and to the employers thereof.

Persons engaged in interstate commerce.—19. This act except section 67 shall not apply to employes engaged in interstate or foreign commerce, not to their employers in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employes.

Place of injury does not exempt.—20. Every employer and employe under this act, except as provided in section 19, shall be bound by the provisions of the act whether injury by accident or death resulting from such injury occurs within the state or in some other state or in a foreign country.

Injuries prior to taking effect of act.—21. The provisions of this act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of this act.

#### Compensation Schedule.

Notice of Injury.—22. Every injured employe or his representative shall immediately upon the occurrence of an injury or as soon thereafter as practicable give or cause to be given to the employer written notice of the injury and the employe shall not be entitled to physician's fees nor to any compensation which may have accrued, under the terms of this act, prior to the giving of such notice; unless it can be shown that the employer, his agent or representative had knowledge of the injury or death, or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person, or for equally good reason; but no compensation shall be payable unless

such written notice is given within thirty days after the occurrence of the injury or death, unless reasonable excuse is made to the satisfaction of the industrial board for not giving such notice.

56 Causes of Injury or Death, Notice.—23. The notice provided in the foregoing section shall state in ordinary language the name and address of the employe, the time, place, nature and cause of the injury or death, and shall be signed by the employe or by a person on his behalf, or in the event of his death by any one or more of his dependents or by a person on their behalf.

No defect or inaccuracy in the notice shall be a bar to compensation unless the employer shall prove that his interest was prejudiced thereby, and then only to the extent of such prejudice.

Said notice shall be given personally to the employer or any of his agents upon whom a summons in civil action may be served under the laws of the state, or may be sent by registered letter addressed to the employer at his last known residence or place of business.

Time for filing claim, limitation.—24. The right to compensation under this act shall be forever barred unless within two years after the injury or if death results therefrom, within two years after such death, a claim for compensation thereunder shall be filed with the industrial board.

Medical attention furnished.—25. During the thirty days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employe, and the employe shall accept and during the whole or any part of the remainder of his disability resulting from the injury, the employer may, at his own option continue to furnish or cause to be furnished, free of charge to the employe, and the employe shall accept an attending physician; provided, however, unless otherwise ordered by the Industrial Board, and in addition such surgical and hospital service and supplies as may be deemed necessary by said attending physician, or the industrial board.

The refusal of the employe to accept such service when provided by the employer shall bar said employe from further compensation until such refusal ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the industrial board the circumstances justify the refusal, in which case the board may order a change in the medical or hospital service.

If in an emergency (or) on account of the employer's failure to provide the medical care for the first thirty days, as herein specified, or for other good reason, a physician other than that provided by the employer is called to treat the injured employe during the first thirty days, the reasonable cost of such service shall be paid by the employer subject to the approval of the Industrial Board.

Pecuniary liability, limit.—26. The pecuniary liability of the employer for medical, surgical and hospital service herein required shall be limited to such charges as prevail in the same community

for similar treatment of injured persons of a like standing of living when such treatment is paid for by the injured person.

Examination of injured person.—27. After an injury and during the period of resulting disability, the employe, if so requested by his employer or ordered by the industrial board, shall submit himself to examination, at reasonable times and places by a duly qualified physician or surgeon designated and paid by the employer of the industrial board. The employe shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employe, or who may have been present at any examination, shall be privileged, either in the hearings provided for in this act, or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this act. If the employe refuses to submit himself to or in any way obstructs such examinations, his right to compensation and his right to prosecute any proceeding under this act shall be suspended, until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the industrial board the circumstances justify the refusal or obstruction. The employer, or the industrial board shall have the right in any case of death to require an autopsy at the expense of the party requiring same.

Commencement of compensation.—28. No compensation shall be allowed for the first seven (7) calendar days of disability resulting from an injury except the benefits provided for in section twenty-five (25); but if disability extends beyond that period compensation shall commence with the eighth day after the injury.

Total disability, compensation.—29. Where the injury causes total disability for work, there shall be paid to the injured employe during such total disability, but not including the first seven (7) days thereof, a weekly compensation equal to fifty-five per cent. of his average weekly wages for a period not to exceed five hundred (500) weeks.

Partial disability, compensation.—30. Where the injury causes partial disability for work, there shall be paid to the injured employe during such disability but not including the first seven (7) days thereof, a weekly compensation equal to one-half ( $\frac{1}{2}$ ) of the difference between his "Average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred (300) weeks. In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

Schedule of injuries.—31. For injuries in the following schedule the employe shall receive in lieu of all other compensation a weekly compensation equal to fifty-five per cent. of his average weekly wages for the period stated against such injuries respectively to-wit:



(e) For the loss by separation of not more than one phalange of a thumb or not more than two phalanges of a finger—15 weeks; (b) for the loss by separation of more than two phalanges of a finger or of a whole finger or a toe—30 weeks; (c) for the loss by separation of more than one phalange of a thumb or of a whole thumb—60 weeks; (d) for the permanent and irrevocable loss of the sight of one eye or its reduction to one-tenth of normal vision with glasses—100 weeks; (e) for the loss by separation of one foot at or above the ankle joint—125 weeks; (f) for the loss by separation of one hand at or above the wrist joint—150 weeks; (g) for the loss by separation of one leg at or above the knee joint—175 weeks; (h) for the loss by separation of one arm at or above the elbow joint—200 weeks; (i) for the permanent and complete loss of hearing—75 weeks.

In all other cases of permanent partial disability, including any disfigurement which may impair the future usefulness or opportunity of the injured employe, compensation in lieu of all other compensation shall be paid when and in the amount determined by the industrial board not to exceed fifty-five per cent. of average weekly wages per week for a period of two hundred weeks.

Refusal to accept position after injury.—32. If an injured employe refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the industrial board such refusal was justifiable.

Permanent injury.—33. If an employe has sustained a permanent injury in another employment than that in which he received a subsequent permanent injury by accident, such as specified in section 31, he shall be entitled to compensation for the subsequent injury in the same amount, as if the previous injury had not occurred.

58 Double compensation not allowed.—34. If an employe received an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries unless it be for a permanent injury, such as specified in section 31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this act.

Extension of compensation period.—35. If an employe receives a permanent injury such as specified in section 31, after having sustained another permanent injury in the same employment, he shall be entitled to compensation for both injuries but the total compensation shall be paid by extending the period and not be increasing the amount of weekly compensation.

When the previous and subsequent permanent injuries result in total permanent disability, compensation shall be payable for per-



manent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Death from other cause after injury.—36. When an employe receives or is entitled to compensation under this act for an injury and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support.

Compensation for death after injury.—37. Where death results from the injury within three hundred weeks, there shall be paid in addition to burial expenses not to exceed one hundred dollars, a weekly compensation equal to fifty-five per cent of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased for total or partial disability, to all dependents of the employee wholly dependent upon his earnings for support at the time of the injury. If the employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the weekly compensation to those dependents shall, in addition to burial expenses, not to exceed one hundred dollars, be in the same proportion to the weekly compensation for persons wholly dependent as the amount contributed by the deceased employee to such partial dependent bears to his annual earnings at the time of the injury.

Dependent persons.—38. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A husband upon a wife with whom he lives at the time of her death if he is then incapable of self-support and actually dependent upon her.

(c) A boy under the age of 18, or a girl under the age of 18 upon the parent with whom he or she is living at the time of the death of such parent, there being no surviving dependent parent. If child is over the ages specified above, but physically or mentally incapacitated from earning, he or she shall be presumed to be totally dependent if there is no surviving dependent parent. As used in this section, the terms "boy," "girl" or "child" shall include step children, legally adopted children, posthumous children, acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases, questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided among them; and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one partly dependent, the death benefit shall

be divided among them according to the relative extent of their dependency.

For the purpose of this act, the dependence of a widow or widower of a deceased employe, and dependent children living with said widow or widower shall terminate with remarriage, and the amount received by her shall be divided among other dependents in the proportion in which they are receiving compensation, and in the event of the separation of the wife from her second or subsequent husband and her obtaining a divorce upon her own application, then she shall receive the same compensation for which she would have been entitled had she not remarried, but the time from the date of the remarriage to the date of the divorce shall be deducted from the time compensation runs and the dependence of a child except a child physically or mentally incapacitated from earning, shall terminate with the attainment of 18 years of age.

No dependents after death.—39. If the deceased employe leaves no dependents the employer shall pay the burial expense of the deceased, not to exceed one hundred dollars.

Average weekly wages.—40. In computing compensation under the foregoing section, the average weekly wages of an employe shall be considered not to be more than twenty-four dollars, nor less than ten dollars; and provided further, That the total compensation payable under this act shall in no case exceed five thousand dollars (\$5,000.00).

Payments deducted.—41. Any payments made by the employer to the injured employe during the period of his disability, or to his dependents, which by the terms of this act were not due and payable when made, may, subject to the approval of the industrial board, be deducted from the amount to be paid as compensation; Provided, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid and not by reducing the amount of the weekly payments unless otherwise hereinafter specified.

Payments monthly or quarterly.—42. The industrial board upon application of either party, may, in its discretion, having regard to the welfare of the employe and the convenience of the employer, authorize compensation to be paid monthly or quarterly instead of weekly.

Redemption of total compensation.—43. Whenever any weekly payment has been continued for not less than 26 weeks, the liability therefor may in unusual cases, where the parties agree and the industrial board deems it to be for the best interest of the employe or his dependents, be redeemed by the payment, in whole or in part, by the employer, of a lump sum which shall be fixed by the board, but in no case to exceed the commutable value of the future installments which may be due under this act. The Board may, however, in its discretion at any time in the case of minor who has received perma-

nently disabling injuries, either partial or total, provide that he be compensated in whole or in part by the payment of a lump sum, the amount of which shall be fixed by the Board, but in no case to exceed the commutable value of the future installments which may be due under this act.

60      Trustee appointed.—44. Whenever the industrial board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the circuit or superior court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Awards reviewed.—45. Upon its own motion or upon the application of any party in interest on the ground of a change in condition, the industrial board may at any time review any award and on such review may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provide- (provided) in this act, and shall immediately send to the parties a copy of the award. No such review shall effect such award as regards any moneys paid.

Receipts for compensation.—Whenever payment of compensation is made to a widow or widower for her or his use or for her or his use and the use of a child or children, the written receipt thereof by such widow or widower shall acquit the employer. Whenever payment is made to any person eighteen years of age or over, the written receipt of such person shall acquit the employer. Whenever payment is made to a minor under the age of 18 years, or to a dependent child over the age of eighteen, the same shall be made to some suitable person or corporation appointed by the circuit or superior court as trustee, and the receipt of such trustee shall acquit the employer; Provided, however, That the industrial board may review the facts and circumstances surrounding the payment of any money and the taking of any receipt as provided in this section any may set the same aside either for fraud or undue influence.

Mentally incompetent persons.—47. If an injured employe is mentally incompetent or is under 18 years of age at the time when any right or privilege accrues to him under this act, his guardian or trustee may in his behalf claim and exercise such right or privilege.

Limitation of time.—48. No limitation of time provided in -his (this) act shall run as against any person who is mentally incompetent or a minor dependent, so long as he has no guardian or trustee.

Joint employers.—49. Whenever any employe for whose injury or death compensation is payable under this act shall at the time of the injury be in the joint service of two or more employers subject to this act, such employers shall contribute to the payment of such com-

compensation in proportion to their wage liability to such employes: Provided, however, That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

Industrial board, governor appoints.—50. There is hereby created a board which shall be known as the Industrial Board of Indiana, which shall consist of three members, not more than two (2) of whom shall belong to any one political party, appointed by the governor, one of whom he shall designate as chairman. Each member of the board shall hold office for four years, and until his successor is appointed and qualified, except that when the board is first constituted, one member shall be appointed for three years, one for four years, and the third shall be present chief of the state bureau of inspection, who shall serve for one year as hereinafter provided. Thereafter upon the expiration of the term of any member, the governor shall appoint his successor for the full term of four years.

Each member of the board shall devote his entire time to the duties of his office and shall not hold any position of trust or profit or engage in any occupation or business interfering or inconsistent with his duties as such member.

Salaries, office force.—51. The salary of each member of the board shall be four thousand dollars per year each. The board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The board may also subject to the approved (approval) of the governor, employ such clerical and other assistants as it may deem necessary and fix the compensation of all persons so employed.

The members of the board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the board before payment is made.

All salaries and expenses of the board shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

Bureau of inspection abolished.—52. The rights, powers and duties conferred by law upon the state bureau of inspection of the State of Indiana are hereby continued in full force and are hereby transferred to the industrial board created and shall be held and exercised by them under the laws heretofore in force and the said state bureau of inspection is hereby abolished.

The present chief inspector of said state bureau of inspection is hereby made a member of said industrial board until the expiration of one year from the date of the taking effect of this act and until his successor is appointed and qualified. The deputy inspectors heretofore appointed by the governor as deputy inspectors in said state bureau of inspection, to-wit:

Inspector of buildings, factories and workshops, inspector of boilers and inspector of mines and mining, together with their assistant inspectors, are hereby continued in their respective offices, at their present salaries, until the expiration of the terms for which they are respectively appointed and until their successors are appointed and qualified and each of them respectively shall have and perform all the rights, powers and duties now held and performed by each of them respectively, together with such other rights, powers and duties as may be prescribed by said industrial board. Upon the termination of the said terms of office for which said deputy inspectors have been appointed, said industrial board, with the concurrence of the governor, shall appoint their successors to serve during the pleasure of said industrial board.

Labor commission abolished.—53. All the rights, powers and duties of the labor commission of the State of Indiana, heretofore created and subsequently transferred to and vested in the state bureau of inspection, are hereby abolished.

Location of offices.—54. The board shall be provided with adequate offices in the capital or some other suitable building in the city of Indianapolis, in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies. The board or any member thereof may hold sessions at any place within the state as may be deemed necessary.

Rules of board.—55. The board may make rules not inconsistent with this act for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be. The board or any member thereof shall have the power for the purpose of this act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the board and shall receive the same fees as now provided by law for like service in civil actions; each witness who appears in obedience to such subpoena of the board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The circuit or superior court shall, on application of the board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records.

Blank forms, record of accidents.—56. The board shall prepare and cause to be printed, and upon request furnish free of charge any employer or employe, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act.

The board shall tabulate the accident reports received from employers in accordance with section 67, and shall publish the same in the annual report of the board and as often as it may deem advis-

able, in such detailed or aggregate form as it may deem best. The name of the employer or employe shall not appear in such publications and the employers' reports, themselves shall be private records of the board and shall not be open for public inspection except for the inspection of the parties directly involved, unless in the opinion of the board the public interest shall require otherwise. These reports shall not be used as evidence against any employer in any suit at law brought by any employe for the recovery of damages.

Agreed compensation.—57. If after seven (7) days from the date of the injury or at any time in case of death, the employer and the injured employe or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the industrial board shall be filed with the board; otherwise such agreement shall be voidable by the employe or his dependents. If approved by the board, thereupon the memorandum shall for all purposes be enforceable by court decree as herein-after specified. Such agreement shall be approved by said  
63 board only when the terms conform to the provisions of this act.

Failure to agree, hearing.—58. If an employer and the injured employe or his dependents fail to reach an agreement in regard to compensation under this act, or if they have reached such an agreement which has been signed and filed with the board and compensation has been paid or is due in accordance therewith, and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make an application to the industrial board for a hearing in regard to the matters at issue and for a ruling thereon.

Immediately after such application has been received the board shall set the date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the county where the injury occurred.

Hearing by board, award, copies sent.—59. The board, by any or all of its members, shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent to each of the parties in dispute.

Application for review.—60. If an application for review is made to the board within seven days from the date of an award, made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses as soon as practicable and shall make an award and file same, with a finding of the facts on which it is based, and the ruling of law by the full board, if any, and send a copy thereof to each of the parties in dispute, in like manner as specified in the foregoing section.

Award, when final, appeal, hearing.—61. An award of the board by less than all of the members, as provided in section 59, if not reviewed as provided in section 60, shall be final and conclusive.

An award by the full board shall be conclusive and binding as to all questions of fact, but either party to the dispute may within thirty days from the date of such award, appeal to the appellate court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

The board, of its own motion, may certify questions of law to said appellate court for its decision and determination.

An assignment of error that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

All such appeals and certified questions of law shall be submitted upon the date filed in the appellate court, shall be advanced upon the docket of said court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs.

An award of the full board, affirmed on appeal, shall be increased thereby five per cent.

64 Judgment rendered.—62. Any party in interest may file in the circuit or superior court of the county in which the injury occurred, a certified copy of a memorandum of agreement approved by the board or of an order or decision of the board, or of an award of the board unappealed from, or of an award of the board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court. Any judgment of said circuit or superior court unappealed from or affirmed on appeal or modified in obedience to the mandate of the appellate court, shall be modified to conform to any decision of the industrial board, ending, diminishing or increasing any weekly payment under the provisions of section 45 of this act upon the presentation to it of a certified copy of such decision.

Contest, not sufficient grounds.—63. If the industrial board or any court before whom any proceedings are brought under this act shall determine that such proceedings have been brought, prosecuted or defended without reasonable ground, it may assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Medical testimony.—64. The board or any member thereof may, upon the application of either party or upon its own motion appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employe and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reasonable fee to be fixed by the board not exceeding



ten dollars for each examination and report, but the board may allow additional reasonable amounts in extraordinary cases.

Attorneys' and medical fees.—65. Fees of attorneys and physicians and charges of hospitals for services under this act shall be subject to the approval of the board.

Board adjusts differences.—6. All questions arising under the act, if not settled by agreement of the parties interested therein with the approval of the board, shall be determined by the board except as otherwise herein provided for.

Report of employer, accidents.—67. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employes in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in section 22, of an injury to an employe causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the industrial board on blanks to be procured from the board for the purpose.

Upon the termination of the disability of the injured employe, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the board on blanks to be procured from the board for the purpose. The said reports shall contain the name, nature and location of the business of the employer, and name, age sex, 65 wages and occupation of the injured employe and shall state the date and hour of the accident causing the injury, the nature and cause of the injury and such other information as may be required by the board. Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the board.

Insurance.—68. Every employer under this act shall either insure or keep insured his liability hereunder in some corporation, association or organization authorized to transact the business of the workmen's compensation insurance in this state, or shall furnish to the industrial board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the board may in its discretion require the deposit of an acceptable surety, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Evidence of compliance by employer.—69. Every employer accepting the compensation provisions of this act shall within thirty days after this act takes effect file with the board in form prescribed by it, and thereafter annually or as often as may be necessary, evidence of his compliance with the provisions of section 68 and all other relating thereto. If such employer refuses or neglects to comply with these provisions he shall be punished by a fine of ten cents



for each employe at the time of the insurance becoming due, but not less than one dollar nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employe either for compensation under this act or at law in the same manner as provided for in section 10.

Certificate of compliance.—70. Whenever an employer has complied with the provisions of section 68, relating to self insurance, the industrial board shall issue to such employer a certificate which shall remain in force for a period fixed by the board, but the board may upon at least sixty days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. After the expiration of one year from such revocation the board may grant a new certificate to the employer upon his petition.

Mutual insurance associations.—71. For the purpose of complying with the provisions of section 68, groups of employers, to form mutual insurance associations of reciprocal insurance associations subject to such reasonable conditions and restrictions as may be fixed by the industrial board, are hereby authorized. Membership in such mutual insurance associations or reciprocal insurance associations so approved together with evidence of the payment of premiums due, shall be evidence of compliance with section 68.

Substitute system of compensation.—72. Subject to the approval of the industrial board any employer may enter into or continue any agreement with his employes to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employes at least equivalent to the benefits provided by this act nor if it requires contributions from the employes unless it confers benefits in addition to those provided under this act at least commensurate with such contributions.

Such substitute system may be terminated by the industrial board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; and in this case the board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the appellate court.

Compulsory clause in policy.—73. All policies insuring the payment of compensation under this act must contain a clause to the effect that as between the employer and the insurer the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purposes of this act shall be jurisdiction of the insurer; and that the

insurer shall in all things be bound by and subject to the awards, judgments or decrees rendered against such insured.

Agreement to pay benefits.—74. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Approval of policy form.—75. Every policy for the insurance of the compensation herein provided, or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the industrial board.

Definitions and miscellaneous provisions.—76. In this act unless the context otherwise requires:

(a) "Employer" shall include the state and any municipal corporation within the state or any political division thereof, and any individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased employer, using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer.

67 Any reference to any employee who has been injured shall when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earnings if the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, dividing by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted.

Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof, during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained.

Where by reason of the shortness of the time during which the

employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, as if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowances of any character made to an employee in lieu of wages are specified part of the wage contract they shall be deemed a part of his earnings.

(d) "Injury" and "personal injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.

Acts, parts invalid.—77. If any section or provision of this act be decided by the courts to be unconstitutional or valid, the same shall not affect the validity (validity) of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Repeal.—78. All acts and parts of acts inconsistent with any provisions of this act are hereby repealed to the extent of such inconsistency.

Act effective.—79. This act shall take effect on the first day of September, 1915, except that Part III with the exception of section 67, shall take effect upon the passage of this act.

Appropriation.—80. For the purpose of paying the salaries and expenses of the members of the industrial board and its employes, the sum of \$70,000.00 or so much thereof as may be necessary is hereby appropriated.

Pending litigation.—81. The provisions of this act shall not affect pending litigation.

Emergency.—82. Whereas, an emergency exists for the immediate taking effect of Part III of this act with the exception of section 67, said Part III with said exception shall be in full force from and after the passage of this act.

68

Copy.

UNITED STATES OF AMERICA,  
District of Indiana:

The President of the United States of America to the Marshal of the District of Indiana, Greeting:

You are hereby commanded to summon Industrial Board of Indiana, Edgar A. Perkins, Kenneth L. Dresser, and Samuel R. Artman, as members of Industrial Board of Indiana, Edgar A. Perkins, Samuel L. Dresser and Samuel R. Artman, if they be found in

your district, to be and appear in the District Court of the United States, for the District of Indiana, aforesaid, at Indianapolis, on the — day of — next, to answer a certain Bill in Equity filed and exhibited in said Court against them by Lower Vein Coal Company.

Hereof they are not to fail under the penalty of the Law thence ensuing.

And have you then and there this writ.

Witness, the Honorable Albert B. Anderson, Judge of said Court, and the seal thereof, this 12th day of April, A. D. 1919.

[SEAL.]

NOBLE C. BUTLER,

*Clerk.*

*Memorandum.*

The said defendants are required to file their answer or other defense in this suit in the Clerk's Office of said Court on or before the twentieth day after service, excluding the day thereof; otherwise the said Bill may be taken pro confesso.

NOBLE C. BUTLER,

*Clerk.*

DISTRICT OF INDIANA:

I received this writ at Indianapolis, in said District, at — o'clock — M., on the 14th day of April, A. D. 1919, and served the same in Marion County, as follows: 14th day of April, 1919, by copy upon Industrial Board of Indiana, Edgar A. Perkins, Kenneth I. Dresser and Samuel R. Artman, as members of Industrial Board of Indiana, by reading the same to and within the hearing of, and by delivering a true copy of this writ to Edward J. Bowlman, secretary of said board, he being the highest officer of said board found in my district; and upon Edgar A. Perkins, Kenneth I. Dresser and Samuel R. Artman, by leaving a true copy of this writ for each of them, in the hands of Edward J. Bowlman, who was authorized and accepted service for each of them; at Indianapolis, Marion County, Indiana, April 14, 1919.

Marshal's Costs:

4 Services ..... \$8.00.

MARK STOREN,

*U. S. Marshal,*

By P. R. JOHN,

*Deputy.*

[Endorsed:] U. S. District Court, District of Indiana. No. 278. Lower Vein Coal Company vs. Industrial Board of Indiana et al. Subpoena in Chancery. Returnable 2nd day of June, 1919. Miller, Dailey & Thompson, Davis, Moore, Cooper, Royse & Bogart, Complainant's Solicitors.

And afterwards, to-wit: at the November Term, 1918, of said Court, on the 23rd day of April, 1919, before the Hon-

orable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Miller, Dailey and Thompson, its solicitors, and with leave of Court first had and obtained now files amendments to its bill of complaint, in the words and figures following to-wit:

70 In the District Court of the United States for the District of Indiana.

No. 278. In Equity.

LOWER VEIN COAL COMPANY, Plaintiff,

v.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER and SAMUEL R. ARTMAN, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser and Samuel R. Artman, Defendants.

*Amendments to Plaintiff's Bill of Complaint.*

The Plaintiff, having first obtained leave of Court so to do, files the following amendments to its Bill of Complaint:

1. The following amendment to be inserted immediately following sub-division 10-a of the Bill, as sub-division 10½ thereof, at line 28 on page 43 of the Bill, being in the following words, to-wit:

10½. Plaintiff alleges that the various corporations, co-partnerships and individuals engaged in the coal mining business in the state of Indiana, have hundreds of employees who are not engaged in the hazardous part of such business, but are employed above the ground, in clerical work, hauling, carpentering, and other similar occupations; that plaintiff, itself, has many employees so engaged, and that said employees last referred to, are not coal miners, and do not dig coal, and that all of said employees are, as plaintiff believes, covered by the provisions of Section 18, as amended; that plaintiff is compelled, if said Section 18, as amended, is a valid and effective law, to pay compensation to all of such employees last specifically referred to, without regard to its negligence in the premises, while other persons, co-partnerships and corporations engaged in other businesses, are not compelled to do so.

71 Plaintiff avers that practically without exception, all persons engaged as employees in the actual mining of coal, in the state of Indiana, are members of the United Mine Workers of America, which is a labor union organized and maintained for the protection of its members; that said United Mine Workers union employs, in Indiana, attorneys whom it pays by the year to attend to the interests of its members, and which attorneys are, by said union, employed to, and do prosecute, without expense to injured employees, or their de-

pendents, all suits for personal injuries brought by said members in the state of Indiana, and that, whereas in other occupations, the industrial workers have large sums of money to pay, frequently on a contingent basis, to lawyers prosecuting their suits for personal injuries, injured coal miners, and their dependents, receive, without abatement, or payment of attorney's fees, all damages recovered by them for personal injuries.

Plaintiff further avers that the persons actually employed in Indiana in the mining of coal, are paid for their services a higher rate of wages, or compensation, than any other industrial workers in Indiana, and that they are able, and many of them do, carry policies of insurance, protecting themselves and their families against the injuries resulting in accident and death.

2. An amendment to be inserted immediately following sub-division "C", at line 13, on page 46, of the Bill, being in the following words, to-wit:

Said act is invalid because it includes within its terms all employees of coal mining companies, whether engaged in the hazardous part of the coal mining business, or not, and is mandatory as to all such employees, and as to the employers of all such employees; whereas, as to employees of other private business corporations, co-partnerships and individuals, it is not mandatory as to those engaged in the non-hazardous part of such employments, but is permissive only, and excludes from its operation railroad employees engaged in train service.

73 STATE OF INDIANA,  
County of Vigo, ss:

Frank W. Richards, being first duly sworn, upon his oath says that he is the duly qualified and acting vice-president of the Plaintiff in this cause; that he makes this affidavit for and on behalf of the Plaintiff, with full power and authority so to do; that he has read over the foregoing amendments to Plaintiff's Bill of Complaint, and knows the contents thereof, and that the allegations therein contained are true, except, that as to matters alleged on information and belief and as to such matters, affiant is informed and believes them to be true.

F. W. RICHARDS.

Subscribed and sworn to before me, a Notary Public within and for said county and state, this 21st day of April, 1919.

My commission expires August 26, 1921.

FRANK J. CHAWFORD,

[SEAL.]

Notary Public.

4 And afterwards, to-wit: at the November Term, 1918, of said Court, on the 5th day of May, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Come now the defendants by Ele Stansbury, Attorney General, John A. Riddle, H. A. Henderson and Taylor White Wright, their attorneys, and file their answer to the bill of complaint herein, in the words and figures following, to-wit:

*Defendants' Separate and Several Answer to Plaintiff's Amended Bill of Complaint.*

Defendants and each of them, separately and severally, for answer to plaintiff's amended Bill of Complaint aver as follows:

1. They admit all that part of the averments of plaintiff's bill contained in specification One (1) thereof.
2. They admit all that part of the averments of plaintiff's bill contained in specification Two (2) thereof.
3. They aver that the value of matter in dispute in this cause is speculative, colorable, and is not susceptible of proof and demonstration with certainty, all — which appears upon the fact of plaintiff's bill, and from the matters and facts alleged therein with reference to the value of the matter of dispute.
4. They admit all that part of the averments of plaintiff's bill contained in specification Four (4) thereof.
5. They admit all that part of the averments of plaintiff's bill contained in specification Five (5) thereof.
6. They admit all that part of the averments of plaintiff's bill contained in specification Six (6) thereof.
- 75 7. They admit all of the averments contained in subdivision Seven (7) of plaintiff's bill except that part thereof which avers that the Workmen's Compensation Act of 1915 as amended in 1917 was a permissive act, and defendants aver that said act of 1915 and as amended in 1917 was not a permissive act but was compulsory as to the State of Indiana, the political subdivisions thereof and the municipalities and the employes thereof, and expressly exempted from the provisions thereof casual laborers, farm agricultural laborers, domestic servants and their employers unless such employee and their employers voluntarily elected to be bound by said act, by giving affirmative notice as specified therein to be bound by the specifications of said act.
8. They admit that the Industrial Board of Indiana claims that said amendatory act of 1919 is valid and effective, and particularly Section 18 thereof as amended by said acts of 1919, that the provisions thereof compel and require all coal mining companies in the State, including the plaintiff, to come under said law as amended, and the jurisdiction of said Industrial Board, and that defendant Industrial Board of Indiana and each defendant hereto assert that the compulsory features of said Section 18 is a valid law, and assert that it is their intention to assume jurisdiction in all personal injury

cases and to administer the provisions of said law including Section 18 as provided in said law as amended unless enjoined from so doing by this Court, but defendants and each of them aver that plaintiff has not rejected the provisions of the Workmen's Compensation Act as amended in 1919 by the General Assembly of Indiana. Defendants and each of them further aver that said act as amended is constitutional and valid and that plaintiff is bound thereby.

76 9. They aver that as to the matters and facts set out in specification Nine (9) of plaintiff's bill, with reference to accidents which have and will occur in and about plaintiff's mines and the consequent expense of defending claims arising therefrom, defendants and each of them are without knowledge, but defendants and each of them aver that the General Assembly of the State of Indiana in enacting the amendatory act of 1919, and particularly Section 18 thereof, based the classification made in said Section 18 partially upon the following facts, viz: That many accidents had theretofore occurred in the operation of the coal mines of Indiana, including the mines of plaintiff, which accidents resulted in the death of and injuries to employees working in said mines in the course of and arising out of their employment, and that in many of such cases such employees and defendants had no redress at law, and that in such cases when such employees and defendants were afforded redress at law, such redress was found by said General Assembly inadequate, expensive and accompanied by vexatious delays, and that the occupation of mining coal had been extremely hazardous and will continue so to be, and that said occupation of coal mining theretofore contained and would continue to contain inherent hazards and dangers not encountered or contained in any other occupation, business or industry carried on in the State of Indiana.

10. Defendants and each of them aver for answer to specification Ten (10) of plaintiff's bill that they admit all the allegations contained in said specification except the averment that there are businesses conducted in the State of Indiana that are more hazardous than that of mining coal, and defendants and each of them aver that the business of mining coal is more hazardous than any other business, occupation or industry carried on and conducted in Indiana, in this, viz: That in proportion to the men employed in the business of mining coal and in the operation of coal mines, the percentage of casualties is greater than in any other business, industry or occupation; that the percentage of fatalities occurring in the operation of coal mines is greater than in any other business, occupation or industry conducted therein; that the nature and extent of injuries received by employees engaged in such business of mining coal are more serious, severe and aggravated than those received by employees in other business, industries and occupations; that the hazards and dangers inherent in the occupation of coal mines are more numerous, diverse and varied than any other occupation in Indiana. And defendants and each of them aver that the General Assembly of 1919 based the classification in part upon the foregoing facts alleged in this specification.



10½. Defendants and each of them say for answer to specification 10½ that in the business of mining coal some of the employees engaged therein are employed above ground in the performance of duties which are necessary for the practical operation of said mines, and are not engaged in the mining of coal, but defendants aver that the work performed by such employees above the ground and of those employees that mine coal are all a part of and necessary to the practical and successful operation of said mines and the marketing of the product thereof. That the per cent of employees whose duties require them to work above the ground in said mines is small, and defendants are informed and believe will not exceed on an average of ten per cent of the total employees in the business of mining coal. And defendants further aver that in the year of 1918 more than one hundred casualties occurred among the employees of coal mines in the State of Indiana whose duties require them to work above the ground, ten of which were fatalities, and defendants aver that the duties of a large per cent of the employees that work on and above the ground as aforesaid, are such as to make such employment dangerous and hazardous. Defendants further aver that all persons engaged as employees in mining coal except Company

78 men, are members of the United Mine Workers of America, and that all the employees of the bituminous mines including plaintiff's firm and comprise District No. 11 of the United Mine Workers of America, which employees number approximately Thirty Thousand (30,000) men, and that said District No. 11 United Mine Workers of America, employ attorneys at an annual salary to handle and prosecute personal injury claims and suits and compensation claims, and represent the interest of said District No. 11 in legal matters, all from funds voluntarily paid by each and all of said employees; that prior to the employment of said attorneys, practically all of the owners and operators of mines in the State of Indiana were and are now organized into an association commonly known and designated as the Indiana Coal Operators' Association, and that such association now employs and for many years has employed attorneys to look after the interests of the operators, including matters of legislation; that after the passage of the Workmen's Compensation Act as amended by the General Assembly of Indiana in 1919, such association employed attorneys to test the validity of said act, and pursuant to such employment, authorization and instructions, plaintiff's amended bill was filed for such purpose. Defendants and each of them further aver as they are informed and believe, that approximately ninety-two (92) persons, firms and corporations engaged in the operations of a majority of the coal mines in the State, are members of another reciprocal insurance organization commonly known and designated as the Indiana Coal Operators Reciprocal Organization, which organization employs and retains and has for many years employed and retained a manager, assistant manager, claim adjusters, investigators and numerous attorneys for the purpose of defending suits and securing releases from liability of personal injury claims of miners injured in the mines insured by said Reciprocal Organization, including the mines of this plaintiff, and said defendants further aver that the several persons, firms and cor-

porations composing said reciprocal insurance organization have rejected the provisions of the Workmen's Compensation Act of 1915, and as amended in 1917, and were not operating such mines under the provisions of said act at the time of the enactment of said Section 18 of said law as amended in 1919, and defendants and each of them further aver that if said Section 18 as amended in 1919 is declared to be unconstitutional and void, that the members of said organization will continue to operate their said mines under the liability laws of the state and will reject the provisions of the Workmen's Compensation Law, and that the employees and dependents thereof will thereby be deprived of the benefits of the Workmen's Compensation Laws of Indiana, and be subjected to the delays, expenses, inadequate settlements, and vexations incident to the collection and attempted collection of damages, and in many cases said employees and dependents under said liability laws will not be able to establish their causes of actions in the courts and will be entirely defeated and without any remedy or redress, and will become the objects of charity. Defendants and each of them further aver that the allegation in plaintiff's amended bill in said specification 10½ thereof, that persons employed in Indiana in mining coal are paid a higher rate of wages than any other industrial workers in Indiana is based upon statistics for the period of world war, during which time the coal mines of Indiana, including plaintiff, operated full time and full capacity, which resulted in an abnormal increase in wages, but defendants aver that prior to said war period and subsequent thereto that the earnings of the miners were and are materially less than during said war period, and that the earnings of coal miners are now materially less than many industrial workers.

11. They aver in answer to specifications Eleven (11) of plaintiff's bill, that Section 18 of the Compensation Law of  
80 Indiana as amended in 1919 is constitutional and valid for the reasons following, to-wit:

(a) The General Assembly of Indiana had the power under the 14th Amendment of the United States Constitution to make the classification as specified in Section 18 as amended in the exercise of its police power.

(b) That the classification as adopted by the Legislature as amended in 1919 is founded upon reasonable basis and does not offend as against the equal protection clause of said 14th amendment.

(c) The classification made by the Indiana General Assembly in Section 18 as amended in 1919, should be sustained upon the following facts which can have reasonably been conceived to have existed in the State of Indiana and in fact did exist at the time of the enactment of said Section, viz:

That at said time there were in operation in the State of Indiana approximately Two Hundred Thirty-nine (239) coal mines employing approximately thirty thousand (30,000) men. That said mines in the main were conducted and operated by means of shafts

sunk from the top of the ground to the vein of coal operated, and that over the top of said shafts tipples were built and constructed of iron and steel about one hundred feet high in which were constructed and built, screens, shakers, crushers, dumps and chutes so as to convey coal down to the railroad cars underneath. Railroad tracks were constructed in, about and around said tipples, engine houses, boiler houses, wash houses, blacksmith shops, and other houses were built close to said tipples, and that in said engine houses there were constructed mechanical apparatus, including cylindrical drums, around which was attached wire rope for hoisting and lowering said cage from the top of said tipples to the bottom of said shafts.

and large dynamos were built, constructed and operated  
81 which generated electricity of high and dangerous voltage for the operation of motor cars and mining machines in said mines, and from the bottom of said shafts there were cut, dug and driven entries, cross entries and air courses, and on the bottom thereof there *was* laid trackage ways which followed said seams and veins of coal up and down grades of various degrees of incline and decline. That over said veins and seams were roofs of limestone, sandstone, slate and other substances, which roofs were filled with slits and faults which made said roofs liable to fall at any time without notice or warning, and that said roofs were supported by timbers, props, caps and cross-bars; that off of said entries and cross entries there were work rooms several feet apart in which miners were digging and loading coal, and that in certain mines commonly called and designated machine mines, large mining machines would undercut the coal, which machines were propelled by means of electricity of high and dangerous voltage supplied by means of uninsulated copper wires strung along said entries, cross entries and air courses, and that after said rooms and faces of said entries were undercut, holes were drilled in said coal and powder placed therein and said coal shot and blasted down, and the loaders would load the same in coal cars which were propelled by means of mules and ponderous electric motors propelled by means of trolley wires strung along near the top of said entries, which entries ranged from seven to fourteen feet in width, and were filled with timbers, props, gob, loose slate, debris, trolley wires, machine wires and other obstructions that endangered the lives and limbs of said mule drivers, motormen and trip riders, and that said veins of coal, of which five veins were working in the bituminous fields and at least two veins were working in the block coal fields of Indiana, emitted dangerous and deadly noxious and inflammable gases which would collect in pockets in abandoned workings and other workings, and which gases frequently — ignited by the lights and *and* lamps of miners,

82 thereby causing explosions and great destruction of health and lives of numerous employees, and many of said mines contained what is commonly known as black damp that insidiously overcame and asphyxiated miners therein. That in the operation of said mines there were many and divers different ways of work and occupations and that men were injured, wounded and killed in many various ways, both below and above the ground, to-wit: on railroad

cars, screens, shakers, engine rooms, boiler rooms, pulleys, belts, dynamos, wash houses, scales, blacksmith shops, tipples, cages, bottoms of shafts, entries, cross entries, track-ways, haulage-ways, switches, frogs, uninsulated machine wires, uninsulated trolley wires, trimming flats, motor trips, motor cars, coal cars, mules, mule trips, mining machines, cutter bars, falls from roof, falls from loose coal, electrocution, falling down shafts, black damp, white damp, marsh gas, dust explosions, windy shots, shots, powder explosions, falling timbers, rubbing ribs of coal, coupling cars, falling from tail chains, and many other ways and manners both accidentally and through the carelessness, negligence, fault and omission of duty of other persons and co-employees, all of which happened prior to the meeting of the General Assembly of the State of Indiana of 1919, and which will continue to happen, and that owing to the peculiar nature of the ways and methods of mining coal in said coal mines in Indiana, said business was, is and will continue to be more hazardous, and accidents have and will occur in more varied ways than in any other business, industry or occupation, and that practically all of the other industries, and businesses of the state except the operators of coal mines, had voluntarily accepted the provisions of the Workmen's Compensation Law and were paying compensation for injuries, and that said coal industry was the only industry in Indiana that was refusing to avail itself of the provisions of the Workmen's Compensation Law of Indiana, and

83 that a large majority of the coal operators and persons, firms and corporations operating said mines had elected to reject the provisions of said Act, and the only other industry or occupation that was not operating under the provisions of said Act were the railroads, which, at the time of the meeting of the General Assembly of 1919, were being controlled and operated by the United States Government, and that the United States Railroad Administration and the employees thereof were subject to an act of Congress of the United States for the year of 1916 entitled "An Act to provide compensation for the employees of the United States suffering injuries while in the performance of their duties, and for no other purpose." And that the employees of said railroads so working for the United States Railroad Administration were not military employees but civil employees of the United States within the meaning and terms of said act of Congress.

Defendants and each of them further aver that said act is not invalid because it violates Section 23 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana as charged in subdivision 2 of specification 11 of plaintiff's bill, for the following reasons and each of them, namely:

(a) Said act is a fair and reasonable classification, and the legislature in the exercise of its police power was not limited by the Indiana Constitution from making the classification named in the act.

(b) That the classification is not unjustly or unreasonably discriminatory against plaintiff and other persons, firms, partnerships and corporations engaged in the business of mining coal, and in

favor of other equally hazardous and dangerous businesses, as alleged, but defendants and each of them aver that in the exercise of its police power the classification made within said act was  
84 legitimate, reasonable and constitutional.

(c) Defendants and each of them further aver that the classification fixed by said act is just and reasonable, and founded upon conditions and facts justifying the classification.

Defendants and each of them aver that said act is valid and does not violate Section 21, Article 1 of the Bill of Rights of the Indiana Constitution, as alleged in plaintiff's bill, for the following reasons, to-wit:

(a) Because the Legislature had the constitutional right in the exercise of its police power to require the plaintiff to pay compensation to its employees pursuant to awards made by the Industrial Board of Indiana in cases where there was no negligence or fault on the part of the plaintiff, even though other persons, firms and corporations would not be subjected to the same liability because the classification contained in the act is supported upon a reasonable basis.

(b) Because in the exercise of its police power the Legislature has the right to require plaintiff to pay compensation to its employees pursuant to the awards of the Industrial Board as provided in said act, regardless of whether said injuries were proximately caused by the negligence of plaintiff.

12. The defendants and each of them aver that as to each and every averment of plaintiff's bill, not herein specifically admitted, denied or explained, defendants say that they and each of them are without knowledge.

13. Defendants and each of them aver that inasmuch therefore that plaintiff is not entitled to the relief prayed for in its bill, and that said act is valid and constitutional, as to the United States Constitution and as to the Indiana Constitution, defendants and each of them prayed that the injunction as prayed for be in all things  
85 denied, and that the interlocutory injunction be in all things dissolved, and that said Section 18 as amended be declared constitutional and valid and not in violation of the Constitution of the United States and the Constitution of the State of Indiana, and for such other and further relief in the premises as may be required by equity and good conscience.

ELE STANSBURY,

*Att'y Gen.,*

JOHN A. RIDDLE,

H. A. HENDERSON,

TAYLOR, WHITE, WRIGHT,

*Solicitors for Defendants and Each of Them.*

U. S. LESH,

HAROLD TAYLOR,

*Of Counsel for Defendants and Each of Them.*

And afterwards, to-wit: at the May Term of said Court, on the 16th day of July, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

This cause coming on now to be finally heard by the Court and the parties appearing by their respective solicitors and the Court having heard the evidence and the argument of counsel and being sufficiently advised in the premises, it is now ordered, adjudged and decreed that the equity of this cause is with the defendant.

It is thereupon ordered adjudged and decreed by the Court that the bill of complaint be and the same is hereby dismissed for want of equity.

And it is further ordered, adjudged and decreed by the Court that the complainant pay to the defendant its costs and charges laid out and expended herein, taxed at \$—.

86 And afterwards, to-wit: at the May Term of said Court, on the 27th day of August, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by Davis, Moore, Cooper, Royse and Bogart and Miller, Dailey and Thompson, its solicitors, and files its petition for appeal and notice, which petition and notice are respectively in the words and figures following, to-wit:

*Petition for Appeal.*

To the Honorable Judge of the District Court of the United States for the District of Indiana, sitting in chancery:

Your petitioner, Lower Vein Coal Company, respectfully represents unto your Honor:

That heretofore on the 12th day of April, 1919, it filed its certain bill of complaint in the above cause in the United States District Court for the District of Indiana, against the above named defendants, and that thereafter on the 16th day of July, 1919, a decree was entered by this honorable court ordering the said bill of complaint dismissed at complainant's costs for want of equity; from which decree your petitioner hereby prays an appeal to the Supreme Court of the United States.

Your petitioner alleges that in the trial of said cause and the final decree therein by the said court, the following errors were committed:

First, In not decreeing the statute of the State of Indiana, viz: Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that the classification attempted in said amendatory act

87 is arbitrary and discriminatory and is not based upon any just or reasonable ground, and in that the General Assembly of the State of Indiana passed said law arbitrarily and without any fair reason, making the Workmen's Compensation Act of Indiana compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal, including complainant, and permissive or voluntary as to all other businesses within the State of Indiana, except railroad employes engaged in train service, domestic employes, and agricultural servants, to which the Act does not apply at all.

Second. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that said Section 18 of the Workmen's Compensation Act of Indiana as amended by the General Assembly of Indiana for the year 1919, rests upon no reasonable or sound basis of classification, but on the contrary compels coal mining companies, including complainant, to operate under the law, and permits all other business corporations to reject its provisions and that this is a discriminatory classification founded on no substantial differences in the business.

Third. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana, as amended by the General Assembly of Indiana for the year 1919, deprives said Lower Vein Coal Company of its property without due process of law in violation of the provisions of the 14th Amendment to the Constitution of the United States.

Fourth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919 denies to the Lower Vein Coal Company the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States, because it is not equal and uniform in its operation,



but selects the line of business in which the complainant is engaged, the same being a lawful business, and imposes onerous burdens upon such business and upon others engaged in the same business as the complainant, without imposing like burdens upon like persons engaged in similar businesses within the State of Indiana, and upon others whose businesses are equally hazardous as the business of the complainant.

Fifth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is an unwarranted abridgement of the rights and privileges guaranteed to said Lower Vein Coal Company by the 14th Amendment to the Constitution of the United States in that it is arbitrarily and unjustly discriminatory, is partial, unreasonable, oppressive and unequal.

Sixth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that it deprives said Lower Vein Coal Company of its property without due process of law, in violation of the 14th Amendment to the Constitution of the United States, because it imposes burdens upon said complainant not imposed upon other persons, partnerships and corporations similarly situated and engaged in businesses of equal or greater hazard.

Seventh. In not decreeing the statute of the state of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it violates Section 23, Article 1 of the Bill of Rights of the Constitution of the State of Indiana, which provides:

"That the General Assembly shall not grant to any citizen or class of citizens, privileges and immunities which upon the same terms shall not equally belong to all citizens."



and because said act in violation of said constitutional provision, does grant to other citizens and classes of citizens the privilege and immunity of not coming under the provisions of said law which it does not grant upon the same terms and equally to the complainant and other persons engaged in mining coal in the State of Indiana, and because there is no basis for the classification fixed by said act, and because said classification is unjust, oppressive and discriminatory.

Eighth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it violates Section 21 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana which provides that:

"No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor except in the case of the state, without such compensation first assessed and tendered."

because in violation of said constitution and provision, complainant's property would be taken by awards made by the Industrial Board of Indiana, where there was no negligence or fault upon the part of the complainant, and other persons, firms and corporations engaged in businesses equally or more hazardous would not be subjected to the same liability, and because the private property of the complainant would be taken by virtue of the awards of the Industrial Board of Indiana, without any negligence on the part of the complainant, and in disregard of the question as to whether or not complainant was negligent, for the public purpose of protecting the State of Indiana, and without compensation to the complainant.

Ninth. In not decreeing the statute of the State of Indiana viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it includes within its terms all employees of coal mining companies whether engaged in the hazardous part of the coal mining business or not, and is mandatory as to all such employees, and as to the employers of all such employees, includ-

ing complainant. Whereas as to other employers it is not mandatory as to those employes engaged in the non-hazardous part of such employments and therefore said amended Section 18 violates Section 23 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana, which provides that the General Assembly shall not grant to any citizen or class of citizens privileges and immunities which upon the same terms shall not belong equally to all such persons.

Tenth. In dismissing complainant's bill of complaint.

For all of which errors and imperfections in the decree rendered herein and in the trial of this cause, your petitioner is desirous of appealing to the Supreme Court of the United States as hereinbefore alleged.

Your petitioner therefore prays for an order granting it an appeal to the Supreme Court of the United States from the decree and the decision rendered in this cause, and that the clerk of this court be directed to issue a citation of the appeal hereof to the appellees herein and to each of them.

LOWER VEIN COAL COMPANY,  
By DAVIS, MOORE, COOPER, ROYCE  
& BOGART,  
MILLER, DAILEY & THOMPSON,  
W. H. THOMPSON,

*Its Solicitors.*

The undersigned solicitor for the defendants in the above entitled cause acknowledges service of the above and foregoing petition for an appeal, and the receipt of a copy thereof this 27th day of August, 1919.

ELE STANSBURY,  
*Attorney General of Indiana.*  
*Solicitor for Defendants.*

In the United States District Court for the District of Indiana.

No. 278, In Equity.

LOWER VEIN COAL COMPANY, Complainant,

vs.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. Dresser, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, Samuel R. Artman, Defendants.

*Notice.*

To the Defendants in the above entitled cause:

Please take notice that on the 29th day of September, A. D. 1919, at the hour of ten o'clock in the forenoon, or as soon thereafter as

counsel can be heard, the plaintiff, through its solicitors, will appear before the Honorable Albert B. Anderson, District Judge of the United States for the District of Indiana, in the court room in the Federal Building in the City of Indianapolis, Indiana, and will present the petition of Lower Vein Coal Company, praying an appeal in said above entitled cause to the Supreme Court of the United States, at which time and place you may appear if you see fit.

DAVIS, MOORE, COOPER, ROYSE & BOGART,  
MILLER, DAILEY & THOMPSON,  
W. H. THOMPSON,

*Solicitors for Complainant.*

94 The undersigned solicitor for the defendants in the above entitled cause acknowledges service of the above and foregoing notice on this the 27th day of August, A. D. 1919, and the receipt of a copy thereof.

ELF STANSBURY,  
*Attorney General of Indiana,*  
*Solicitor for Defendants.*

95 And afterwards, to-wit: at the May Term of said Court, on the 29th day of September, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

96 In the District Court of the United States for the District of Indiana.

No. 278, In Equity.

LOWER VEIN COAL COMPANY, Complainant.

VS.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER and SAMUEL R. ARTHUR, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, Samuel R. Arthur, Defendants.

On this, the 29th day of September, 1919, comes the complainant herein, by Davis, Moore, Cooper, Royse & Bogart, and Miller, Dailey & Thompson, its solicitors, and having presented to the court its petition praying for the allowance of an appeal to the Supreme Court of the United States, intended to be made and taken by it, and also praying that a transcript of the record, proceedings and papers upon which the decree herein was written and rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

And the court now allows said appeal and fixes the appeal bond to be given by the complainant in the sum of Five Hundred Dollars (\$500.00) with A. M. Ogle & W. E. Eppert, as sureties thereon, and the said complainant now files said bond with A. M. Ogle & W. E. Eppert, as sureties, in the penal sum of Five Hundred Dollars (\$500.00) conditioned as required by law, and said bond and the sureties thereon are approved by the court.

Now, in consideration thereof, the court does allow the said appeal.

And afterwards, to-wit: at the May Term of said Court, on the 29th day of September, 1919, before the Honorable Albert B. Anderson, Judge as aforesaid of said Court, the following further proceedings in the above entitled cause were had, to-wit:

No. 278, In Equity.

LOWER VEIN COAL COMPANY, Complainant,

vs.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER and SAMUEL R. ARTMAN, as Members of the Industrial Board of Indiana; EDGAR A. PERKINS, KENNETH L. DRESSER, and SAMUEL R. ARTMAN, Defendants.

*Order Enlarging Time to File Record.*

It appearing to the court that the complainant in the above entitled cause has been allowed an appeal to the Supreme Court of the United States, and a citation thereon has been issued and served, which citation was made returnable on the 25th day of October, 1919, but the rules of said Supreme Court require the record of said cause to be filed in the office of the Clerk of the Supreme Court of the United States on or before said return day, to-wit, the 25th day of October, 1919, unless prior to said last named day the time for such filing shall be enlarged, and said complainant having appeared before this court asking that said time should be enlarged and having shown good cause therefor and the defendants having consented thereto:

It is ordered that the time within which said complainant shall file the record on said appeal in the office of the clerk of said Supreme Court of the United States, be and the same hereby is, enlarged so as to extend to and include the 18th day of November, 1919.

And at the same time on said 29th day of September, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Now at this time comes the complainant and presents and files

its appeal bond herein in the penalty of Five Hundred Dollars, with A. M. Ogle and W. E. Eppert as sureties, which bond is approved by the Court, and is as follows, to-wit:

Know all men by these presents, that we, Lower Vein Coal Company, as principal, and A. M. Ogle and W. E. Eppert, as sureties, of the County of Vigo, State of Indiana, are held and firmly bound unto the Industrial Board of Indiana, Edgar A. Perkins, Kenneth L. Dresser, and Samuel R. Artman, as members of the Industrial Board of Indiana, and Edgar A. Perkins, Kenneth L. Dresser and Samuel R. Artman, in the sum of Five Hundred Dollars (\$500.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payments, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, by these presents.

Scaled with our seals and dated this 26th day of September, 1919.

Whereas the above named Lower Vein Coal Company has perfected an appeal to the Supreme Court of the United States to reverse the judgment of the District Court for the District of Indiana in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above named Lower Vein Coal Company shall prosecute its said appeal to effect and answer all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

101

LOWER VEIN COAL COMPANY,  
By F. W. RICHARDS,

*President;*

A. M. OGLE,  
W. E. EPERT.

Attest:

F. C. FISBECK,  
[SEAL.] *Secretary.*

STATE OF INDIANA,  
County of Vigo, ss:

On the 26 day of September, 1919, personally appeared before me the Lower Vein Coal Company by its President, F. W. Richards, to me well known to be such Vice-President, and A. M. Ogle and W. E. Eppert, respectively known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and respectively acknowledged each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said A. M. Ogle and W. E. Eppert being respectively by me duly sworn, says, each for himself and not one for the other, that he is a resident and householder of the said county of Vigo and that

he is worth the sum of \$25,000.00 over and above his just debts and legal liability and property exempt from execution.

LOWER VEIN COAL COMPANY,  
By F. W. RICHARDS,

*President;*

A. M. OGLE,

W. E. EPPERT.

Subscribed and sworn to before me this 26 day of September, 1919.  
[SEAL.] FRANK J. CRAWFORD,

*Nodary Public.*

My commission expires August 20, 1921.

Approved this 29th day of September, 1919.

ALBERT B. ANDERSON,

*Judge.*

And at the same time on said 29th day of September, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant by counsel, and files its assignment of errors herein, in the words and figures following, to-wit:

102 In the District Court of the United States for the District of Indiana.

No. 278, In Equity.

LOWER VEIN COAL COMPANY, Complainant,

VS.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. Dresser, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, and Samuel R. Artman, Defendants.

*Assignment of Errors to the Supreme Court of the United States.*

Comes now the Lower Vein Coal Company, by Davis, Moore, Cooper, Royse & Bogart, and Miller, Dailey & Thompson, its solicitors, and says that in the record and proceedings, and in rendering the decree in the above cause, there is manifest error in this, to-wit:

First, In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act which was and is Chapter 106 of laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly for the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that classification attempted in said amendatory act is

arbitrary and discriminatory and is not based upon any just or reasonable ground, and in that the General Assembly of the State of Indiana passed said law arbitrarily and without any fair reason, making the Workmen's Compensation Act of Indiana compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal, including complainant, and permissive or voluntary as to all other businesses within the State of Indiana; except railroad employes engaged in train service, domestic employes, and agricultural servants, to which the act does not apply at all.

Second. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that said Section 18 of the Workmen's Compensation Act of Indiana as amended by the General Assembly of Indiana for the year 1919, rests upon no reasonable or sound basis of classification, but on the contrary compels coal mining companies, including complainant, to operate under the law and permits all other business corporations to reject its provisions and that this is a discriminatory classification founded on no substantial differences in the business.

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Third. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana, as amended by the General Assembly of Indiana for the year 1919, deprives said Lower Vein Coal Company of its property without due process of law in violation of the provisions of the 14th Amendment to the Constitution of the United States.

Fourth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, denies to the Lower Vein Coal Company the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States, because it is not equal and uniform in its operation, but selects the line of business in which

the complainant is engaged, the same being a lawful business, and imposes onerous burdens upon such business and upon others engaged in the same business as the complainant, without imposing like burdens upon like persons engaged in similar businesses within the State of Indiana, and upon others whose businesses are equally hazardous as the business of the complainant.

Fifth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is an unwarranted abridgement of the rights and privileges guaranteed to said Lower Vein Coal Company by the 14th Amendment to the Constitution of the United States in that it is arbitrarily and unjustly discriminatory, is partial, unreasonable, oppressive and unequal.

Sixth. In not decreeing the statute of the state of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the state of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that it deprives said Lower Vein Coal Company of its property without due process of law, in violation of the 14th Amendment to the Constitution of the United States, because it imposes burdens upon said complainant not imposed upon other persons, partnerships and corporations similarly situated and engaged in businesses of equal or greater hazard.

Seventh. In not decreeing the statute of the State of Indiana, viz, Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it violates Section 23, Article 1, of the Bill of Rights of the Constitution of the State of Indiana, which provides:

"That the General Assembly shall not grant to any citizen or class of citizens, privileges and immunities which upon the same terms shall not equally belong to all citizens."



and because said act in violation of said constitutional provision, does grant to other citizens and classes of citizens the privilege and immunity of not coming under the provisions of said law which it does not grant upon the same terms and equally to the complainant and other persons engaged in mining coal in the State of Indiana, and because there is no basis for the classification fixed by said act, and because said classification is unjust, oppressive and discriminatory.

Eighth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as  
 107 the Indiana Workmen's Compensation Act, which was and is Chapter 106 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it violates Section 21 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana which provides that:

"No man's particular services shall be demended without just compensation. No man's property shall be taken by law without just compensation; nor except in the case of the state, without such compensation first assessed and tendered."

because in violation of said constitution and provision, complainant's property would be taken by awards made by the Industrial Board of Indiana, where there was no negligence or fault upon the part of the complainant, and other persons, firms and corporations engaged in businesses equally or more hazardous would not be subjected to the same liability, and because the private property of the complainant would be taken by virtue of the awards of the Industrial Board of Indiana, without any negligence on the part of the complainant, and in disregard of the question as to whether or not complainant was negligent, for the public purpose of protecting the State of Indiana, and without compensation to the complainant.

Ninth. In not decreeing the statute of the State of Indiana, viz., Section 18 of an act approved March 8th, 1915, known as the Indiana Workmen's Compensation Act, which was and is Chapter 106  
 108 of the laws of the General Assembly of the State of Indiana for the year 1915, as amended by the General Assembly of the State of Indiana for the year 1919, being Chapter 57 of the laws of the General Assembly of the State of Indiana for the year 1919, unconstitutional and void, in that Section 18 of the Workmen's Compensation Law of Indiana as amended by the General Assembly of Indiana for the year 1919, is invalid because it includes within its terms all employes of coal mining companies whether engaged in the hazardous part of the coal mining business or not, and is mandatory as to all such employees, and as to employers of all such employees, including complainant. Whereas

as to other employers it is not mandatory as to those employees engaged in the non-hazardous part of such employments and therefore said amended Section 18 violates Section 23 of Article 1 of the Bill of Rights of the Constitution of the State of Indiana, which provides that the General Assembly shall not grant to any citizen or class of citizens privileges and immunities which upon the same terms shall not belong equally to all of such persons.

Tenth. In dismissing complainant's bill of complaint.

By reason whereof complainant prays that said decree may be reversed, and for its costs herein, and for all other relief in the premises as equity may require and which to your Honors shall seem meet.

DAVIS, MOORE, COOPER, ROYSE &  
BOGART,  
MILLER, DAILEY & THOMPSON,  
W. H. THOMPSON,

*Solicitors for Complainant.*

109 The undersigned solicitor for the defendants in the above entitled cause acknowledges service of the above and foregoing assignment of errors to the Supreme Court of the United States, and receipt of a copy thereof, this 29th day of September, 1919.

ELE STANSBURY,  
*Attorney General of Indiana,*  
*Solicitor for Defendants.*

110 And at the same time on said 29th day of September, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to-wit:

Comes now the complainant, by counsel, and files its praecipe for transcript of record and lodges its condensed statement of evidence herein with copy of notice to defendants.

111 In the District Court of the United States for the District of Indiana.

No. 278, in Equity.

LOWER VEIN COAL COMPANY, Complainant,  
vs.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, Samuel R. Artman, Defendants.

*Præcipe.*

To Noble C. Butler, Clerk of the United States District Court for the District of Indiana:

Will the clerk please include and insert in the record on appeal of the above entitled cause in equity to the Supreme Court of the United States the following pleadings, files and papers, to wit:

Plaintiff's bill of complaint and exhibits thereto.

Subpœna and return of marshal thereon.

Amendment to bill of complaint.

Answer of defendants to bill of complaint.

Condensed statement of the evidence taken in said cause in narrative form as filed in the office of the Clerk by plaintiff and as approved by the judge of said court, including order approving same.

Plaintiff's petition for appeal.

112 Order of court allowing appeal.

Plaintiff's appeal bond, and approval endorsed thereon.

Order of court extending time for filing transcript.

Plaintiff's assignment of errors.

Notice of appellant to appellees of lodgment of condensed statement of evidence in clerk's office.

Also including on each of the above papers acknowledgment of service on appellees as the same appear thereon.

Also this præcipe.

Final Decree.

Dated this 29th day of September, 1919.

DAVIS, MOORE, COOPER, ROYCE &  
BOGART,  
MILLER, DAILEY & THOMPSON,  
W. H. THOMPSON,

*Solicitors for Plaintiff.*

The undersigned solicitor for defendants and appellees in said cause acknowledges service of the above and foregoing præcipe and receipt of a copy thereof this 29th day of September, 1919.

ELE STANSBURY,  
*Attorney General of Indiana, Solicitor  
for Defendants and Appellees.*

113 In the District Court of the United States for the District of Indiana.

No. 278, in Equity.

LOWER VEIN COAL COMPANY, Complainant,

vs.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, Samuel R. Artman, Defendants.

To the Defendants in the Above Entitled Cause:

You are hereby notified that on this, the 29th day of September, 1919, the undersigned, Lower Vein Coal Company, complainant and appellant in the above cause, has lodged in the office of the clerk of the United States District Court for the District of Indiana, in the Federal Building in the City of Indianapolis, Indiana, a condensed statement of all the evidence in said cause for use on appeal of said cause to the Supreme Court of the United States.

You are further notified that on the 7th day of October, 1919, at ten o'clock A. M., or as soon thereafter as counsel can be heard, the complainant and appellant in said cause will ask the court and the judge thereof to approve said condensed statement.

114 If you care to present any objection to said statement, or to ask for any modification or amendment thereof, you should be present at said time and place.

DAVIS, MOORE, COOPER, ROYCE & BOGART,

MILLER, DAILEY & THOMPSON,  
W. H. THOMPSON,

*Solicitors for Complainant and Appellant.*

The undersigned solicitor for the defendants in the above cause acknowledges service of above notice and receipt of a copy thereof this 29th day of September, 1919.

ELE STANSBURY,

*Attorney General of Indiana,  
Solicitor for Plaintiff.*

115 And afterwards, to wit: at the May Term of said Court, on the 7th day of October, 1919, before the Honorable Albert B. Anderson, Judge of said Court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the complainant by counsel and files its Condensed Statement of Evidence herein duly approved by the Court, in the words and figures following, to wit:

116 In the District Court of the United States for the District of  
Indiana.

No. 278, in Equity.

LOWER VEIN COAL COMPANY, Complainant,

VS.

INDUSTRIAL BOARD OF INDIANA, EDGAR A. PERKINS, KENNETH L. DRESSER, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser, Samuel R. Artman, Defendants.

*Condensed Statement of the Evidence in Said Cause, for Use on Appeal to the Supreme Court of the United States.*

Complainant's Evidence.

*Stipulation.*

It was agreed that either party might offer in evidence any publication or document purporting to have been issued by authority of either the state or national Government, or of any of the official departments thereof; that no objection would be interposed to the introduction of any such publication or document upon the grounds that they have not been duly authenticated by the proper  
117 public officers.

It was stipulated that complainant, Lower Vein Coal Company rejected the provisions of the Workmen's Compensation Act of Indiana of 1915, as amended in 1917, and that the said complainant took all the steps required by law for the purpose of effectuating such rejection; that prior to November 1, 1917, said complainant had placed on file with the Industrial Board of Indiana a written rejection, in full compliance with the provisions of said law on the form prescribed by said Industrial Board, and that said written rejection had never been withdrawn or held insufficient, and that complainant prior to said date had posted a notice in its mines, offices and shops that complainant had rejected the provisions of said law, which notice was in the form prescribed by the said Industrial Board, and on compliance with the law.

HOWE S. LANDERS testified on direct examination:

Was Secretary of the Industrial Board of Indiana from May 1, 1915, to October 30, 1918; is familiar with Year Book of Indiana, which, so far as statistics from the Industrial Board are concerned, is prepared under the supervision and direction of the Secretary of said Board, except those statistics relating to the  
118 Inspection Department; has compiled data for the year ending October 30, 1918, with reference to number of employees in

Indiana in certain specified businesses, number of accidental injuries to such employees, and the percentage of injuries to the total number of men employed; that this data was compiled from an inspection of the reports of the several employers, made in pursuance of the statute of Indiana, to the License Department of the Industrial Board of Indiana.

The following table shows the character of the industry, the number of employees, the number of accidents and the percentages of accidents to number of employees:

119	Character of industry.	No. of employees.	No. of accidents.	Per cent.
	Transfer, storage & warehouse.....	604	262	42.2
	General Contracting .....	5,357	1,217	22.7
	Gas Manufacturing .....	2,508	457	18.2
	Iron and Steel Companies.....	27,720	3,446	12.5
	Oil Refining .....	5,129	591	11.5
	Glass Manufacturing .....	8,377	949	11.3
	Stone Quarrying and cutting.....	2,315	263	11.3
	Iron, steel and allied industries, including metal finishers, saw manufacturing, stove manufacturing, foundries, castings and forgings..	59,516	6,096	10.24
	Veneer Manufacturing .....	1,279	126	9.8
	Cement Manufacturing .....	2,037	203	9.9
	Furniture manufacturing & repairs..	11,158	1,050	9.4
	Manufacture of explosives .....	817	73	8.9
	Coal Mining .....	26,877	2,162	8.04

#### Cross-examination:

That all industrial employers who employed five or more men were required by law to file an annual report and pay a fee to the Industrial Board, the amount of the fee depending upon the number of employees; that the reporting of accidents is required by the Workmen's Compensation Act; that the number of accidents in the data compiled was taken from the reports made under the Workmen's Compensation Act; that the employer is obligated by the Workmen's Compensation Act to make a report of all accidents to all employees which occasion a disability for work of more than one day, and the figures as to the number of accidents in these several industries were taken from these reports so made pursuant to the statute; that the law requires a report of all accidents, regardless of the number of employees or whether the employer is subject to the terms of the compensation law; that the number of employees comes from the reports made by employers who employ five or more men, while the number of accidents is obtained from the reports of accidents made by all employers, whether employing more than five or less than five.

(The Court then inquired whether the inclusion in the number of accidents of reports from employers who have less than five in their employ would substantially affect the result, to which the Chair-

man of the Industrial Board replied that it would very much  
 121 affect the result in some instances, especially in the storage  
 and transfer business, where it is known that a very large  
 number of people engaged in that business have fewer than five  
 employees, and that a very great number of accidents reported are  
 from employers having less than five employees.)

That witness has not made any computation from the official records that would assume to show the gross number of employees and the gross number of accidents within the several particular industrial occupations; that this information could only be compiled after a long and laborious amount of work; that witness did not go into the relative degree of disability at all; that in compiling the data on the coal mining industry witness included the gross number of employees reported to the License Department, including those working above ground as well as under-ground; that the great majority of employers of labor in Indiana, other than in the coal mining business have elected to operate under the compensation law.

Redirect examination:

That during the time witness was Secretary of the Industrial Board he knew of two concerns engaged in the business  
 122 of manufacturing gas in Indiana that employed less than five  
 men; that in the opinion of witness, all glass manufacturers in Indiana employed more than five men; this is true of the oil refining business; cannot say about the manufacture of explosives; that all employers in Indiana engaged in the manufacture of steel and iron have more than five employees; this is true of cement manufacturers; that the great majority of the producers of coal also employ more than five men; that witness's testimony as to the number of employees in various businesses is based upon his impression gathered from his work and his experience and from general knowledge of industrial conditions in Indiana.

Questions by Judge Artman, Chairman of Industrial Board:

That the Industrial Board does not keep any record that purports to give the names of all employers in any class of industry; that the record that it kept prior to the enactment of House Bill No. 110 in 1919 applies only to those employers having five or more men, so that the data compiled with reference to the transfer and storage business does not contain the names of all employers; that a very large per cent of the employers engaged in the transfer and storage  
 123 business employ less than five people; that the number of injuries reported in this business is 221, including the employees of persons employing five or more and those employing fewer than five; that it would be possible to ascertain how many of those 221 injured employees were included within the 604 employees reported in the transfer and storage business.

(NOTE.—Witness subsequently made this investigation and found that out of the 221 accidents reported, 97 accidents were to the em-



ployees of persons having five or more employees. This makes the comparative list on transfer and storage business as follows:

Number of employees .....	604
Number of accidents .....	97
Percentage .....	16)

That the injuries to men engaged in the storage and warehouse business are as a rule minor injuries; that the injuries to employees engaged in the coal mining business are as a rule severe; that the injuries to persons engaged in the coal mining business, as to disfigurement or marring the appearance of the employees, are very severe; that the reports of employees engaged in the coal mining business show a greater per cent of disfigurement and marring of the appearance of the person, on the head and face, than in any other industry in the state.

#### 124 Redirect examination:

That Judge Artman in his cross-examination selected the one industry, that is, the transfer, storage and warehouse business, in which there are many people engaged having less than five employees.

The complainant introduced a table of dismemberments, classified by industries for the year ending Sept. 30, 1918, as appearing in the Year Book, as follows:

125

#### Dismemberments.

Classified as to industry.

Total number of accidents.

Number reported .....	772
Agricultural implements .....	12
Auto manufacturing and accessories .....	66
Awning and tent manufacturing .....	1
Agriculture .....	1
Baby carriage manufacturing .....	6
Brick manufacturing .....	3
Basket manufacturing .....	3
Boiler manufacturing and repairs .....	3
Breweries .....	1
Box manufacturing .....	10
Butchers and meat markets .....	3
Book and stationery .....	3
Boots and shoe manufacturers and deals .....	3
Bakeries .....	6
Bicycles, motorcycles and parts .....	1
Canning and preserving .....	4
Car manufacturing and repairs .....	18
Carriage and wagon manufacturing and parts .....	17
126 Coal dealers .....	4
Coal mining .....	32
Coffin manufacturing and undertakers' supplies .....	3

Classified as to industry.	Total number of accidents.
Commercial heat, light and power .....	10
Can manufacturing .....	5
Chemical manufacturers and dealers .....	3
Cotton mills-textile manufacturing .....	4
Cresoting .....	1
Cutlery .....	1
Corn products .....	1
Confectioners .....	1
Cement manufacturing .....	3
Coatings .....	11
Chain manufacturing .....	8
Clothing manufacturing .....	3
Cleaners and dyers .....	1
Clay manufacturing and potteries .....	1
Contractors, railroad .....	4
Contractors, general .....	14
127 Contractors, bridge and structural iron .....	8
Contractors, marble workers .....	1
Contractors, road, slate, etc. ....	1
Contractors, rivers and harbors .....	1
Contractors, plumbers .....	4
Contractors, stone masons .....	1
Distillery .....	1
Dry goods and general merchandise .....	1
Dairy products .....	1
Electrical and gas fixtures .....	27
Electric railways .....	5
Excelsior manufacturing .....	1
Enamelware manufacturing .....	4
Express companies .....	3
Envelope manufacturing .....	1
Food products manufacturing .....	1
Forging .....	12
Fence manufacturing .....	1
Fireproof articles .....	2
Fireless cookers .....	2
Furniture manufacturers and dealers .....	64
128 Foundry .....	5
Flour and grist mills .....	3
Furnace manufacturing and repairs .....	1
Gas manufacturing .....	5
Glass manufacturing .....	9
Grocers, wholesale and retail .....	5
Garage .....	5
Glove manufacturing .....	2
Glue manufacturing .....	1
Grain elevators and dealers .....	1
Hardware .....	5

Classified as to industry.

Total number of accidents.

Handicraft manufacturing .....	3
Hauling .....	1
Hotels .....	3
Homes, aged, orphans', soldiers', etc. ....	1
Harness and saddlery .....	3
Hospital .....	3
Ice cream and cold storage .....	1
Iron and steel .....	32
Insurance .....	3
129 Insulation manufacturing .....	3
Junk dealers .....	2
Lodges .....	1
Locomotive headlights .....	2
Lumber manufacturing and dealers .....	19
Laundries .....	1
Liquor dealers .....	1
Machinery and machine shops .....	42
Mattresses .....	1
Meat packers .....	6
Match manufacturing .....	1
Metal refining .....	3
Musical instruments .....	16
Newspapers .....	5
Novelty manufacturing .....	1
Oil refining .....	2
Paper manufacturing .....	4
Printing and publishing .....	1
Planing mills .....	7
Pump and tank manufacturing .....	12
Paint and varnish .....	1
130 Quilt manufacturing .....	1
Rubber manufacturing and vulcanizing .....	5
Rope and twine manufacturing .....	1
Restaurants .....	1
Regalia and uniform manufacturing .....	1
Specialty manufacturing .....	4
Saw mills .....	5
Scale manufacturing .....	2
Soap manufacturing and washing powder manufacturing .....	2
Steam railroads .....	12
Steel and wire .....	3
Stone (cutting and quarries) .....	2
Sugar manufacturing .....	1
Surgical and hospital supplies .....	1
Stencils, seals, etc. ....	6
Schools and universities .....	1
Sewing machines manufacturing and repairs .....	1
Sheet metal workers .....	1

Classified as to industry.	Total number of accidents.
Toy manufacturing .....	2
Tool manufacturing .....	10
131 Threshermen .....	7
Telephones and telegraphs .....	5
Typewriting machines and stenotypes .....	1
Transfer storage and warehouse .....	1
Veneer manufacturing .....	1
Miscellaneous or unclassified .....	5

The complainant then introduced in evidence the statistical report of the Industrial Board of Indiana of accidents from October 1, 1917, to October 1, 1918, classified as to industries, appearing in the 1918 Year Book of Indiana, which is as follows:

132 *Statistical Report.—Accidents from October 1, 1917 to October 1, 1918.*

Classified as to industry.	Total number of accidents.
Abattoir .....	106
Aeroplanes .....	2
Agricultural implements .....	243
Auto mfg., includes body, tops and repairs .....	196
Awnings and tent manufacturing .....	40
Agriculture .....	45
Amusements .....	103
Baling Hay, hemp, straw, etc. ....	3
Baby carriage manufacturing .....	57
Bag manufacturing .....	16
Bank and trust companies .....	15
Bakeries .....	155
Baking powder manufacturing .....	4
Barber shops and baths .....	5
Basket manufacturing .....	60
Bed spring manufacturing .....	16
133 Bicycles, motorcycles and parts .....	21
Bill posting .....	4
Blacksmith .....	18
Boats and barges, manufacturing and repairs .....	4
Boiler manufacturing .....	69
Books and stationery .....	7
Boots and shoe manufacturers and dealers .....	42
Bottlers .....	41
Bowling and billiards .....	4
Box manufacturing .....	228
Brass foundries .....	52
Breweries .....	145
Brick, tile manufacturing and sewer pipe .....	277

Classified as to industry.

Total number of accidents.

Brush and broom manufacturing.....	20
Butchers and meat markets.....	52
Buildings (office and apartment).....	19
Button manufacturing.....	19
134 Can manufactories.....	18
Canning and preserving.....	248
Car manufacturing and repairs.....	1,009
Carpet and rug manufacturers and dealers.....	1
Carriage and wagon manufacturing and parts.....	357
Castings.....	841
Cattle feed manufacturing.....	14
Cement manufacturing.....	203
Cemetery association.....	5
Chain manufacturing.....	292
Chemical manufacturers and dealers.....	180
Churches.....	1
Cigar and tobacco manufacturers and dealers.....	33
Cistern and well drillers.....	4
Clay manufacturing and potteries.....	111
Cleaners and dyers.....	20
Clothing manufacturing (men's and women's).....	227
Coal dealers.....	195
Coal mining.....	2,062
135 Coffee, tea and spices.....	8
Coffin manufacturing and undertakers' supplies.....	50
Commercial light, heat and power.....	394
Commission merchants.....	23
Confectioners.....	79
Contractors, railroads.....	132
Contractors, general.....	1,217
Contractors, asbestos.....	7
Contractors, bridge and structural iron.....	253
Contractors, electrical.....	44
Contractors, carpenters.....	26
Contractors, elevators.....	44
Contractors, brick.....	1
Contractors, lathers.....	1
Contractors, metal workers.....	1
Contractors, painters, decorators and paperhangers.....	51
Contractors, plumbers and steamfitters.....	157
Contractors, plasterers.....	9
Contractors, stone masons.....	32
136 Contractors, tunnel, subway, sewer.....	27
Contractors, rivers and harbors.....	26
Contractors, excavating.....	7
Contractors, cement.....	40
Contractors, road and streets.....	104
Corporage.....	38

Classified as to industry.	Total number of accidents.
Cotton mills, textile manufacturing.....	69
Creameries .....	9
Creosoting .....	35
Corn products .....	119
Cutlery .....	10
Dentists .....	2
Dairy products .....	108
Distillery .....	33
Dressmakers .....	1
Druggists .....	34
Dry goods and general merchandise.....	198
Dry kiln accessories manufacturing.....	7
137 Domestic employes, cooks, maids, housemen, private chauffeur .....	2
Electrical and gas fixtures, manufacturers and dealers...	391
Electrical railways .....	143
Elevator manufacturing .....	13
Enamelware manufacturing .....	103
Engravers .....	8
Envelope manufacturing .....	13
Excelsior manufacturing .....	5
Explosive manufacturing .....	390
Express companies .....	165
Fish markets .....	12
Fence manufacturing .....	30
Film manufacturing .....	1
Fire proof articles.....	30
Fireless cookers .....	1
Fertilizer manufacturing .....	34
Florists .....	25
Flour and grist mills.....	150
Food products manufacturing.....	6
138 Forging .....	362
Foundry .....	997
Forestry, landscape architecture .....	6
Furnace manufacturing and repairs .....	16
Furniture manufacturing and repairs .....	1,050
Garages .....	139
Garbage disposals .....	7
Gas manufacturing .....	457
General cleaners (houses and stores) .....	1
Glass manufacturing .....	949
Glove manufacturing .....	25
Glue manufacturing .....	24
Grocers, wholesale and retail .....	223
Grain elevator and dealers.....	136
Handle manufacturing .....	52
Hardware .....	267

Classified as to industry.	Total number of accidents.
Hardwood floors	15
139 Harness and saddlery	42
Hauling	41
Hides and leather (tannery)	47
Homes—aged, orphans, soldiers, etc.	2
Hospitals	30
Hotel	103
House moving and wrecking	6
Ice cream manufacturing	18
Ice manufacturing and cold storage	197
Insulation	42
Insurance	5
Iron and steel	3,446
Jewelers, manufacturers and dealers	2
Junk dealers	152
Knitting mills	50
Laundries	145
Lightning rod, manufacturing and erecting	2
Liquor dealers	22
Lime manufacturing	43
Live stock commission merchants	14
140 Livery	18
Locomotive headlights	72
Lodges and clubs	19
Lumber manufacturing and dealers in building material	458
Machinery and machine shops	2,831
Marble, tile and granite monuments	13
Match manufacturing	7
Mattresses	14
Meat packers	397
Metal refining	208
Millinery	2
Mirror manufacturing	8
Musical instruments	153
Municipal corporations	18
Newspapers	46
Souvenir manufacturing	16
Overall manufacturing	3
Oil well drillers	7
Oil pipes and supplies	22
41 Oil refining	591
Optical	2
Paint and varnish	13
Paper board manufacturing	135
Paper manufacturing	260
Pattern works (wood and metal)	4
Pharmaceutical and biological manufacturing	76
Photographers and supplies	4

Classified as to industry.		Total number of accidents.
Planing mills	142	142
Plating	27	27
Plumbers' supplies	6	6
Polish manufacturing	2	2
Poultry dealers	46	46
Printing and publishing	95	95
Pump and tank manufacturing	541	541
Quilt manufacturing	5	5
Regalia and uniform manufacturing	20	20
Railway signals	5	5
Real estate	16	16
142 Refrigerators	14	14
Rendering	1	1
Restaurants	62	62
Roofing	82	82
Rope and twine	86	86
Rubber manufacturing and vulcanizing	198	198
Safe manufacturing	18	18
Sand and gravel	45	45
Saw mills	172	172
Saw manufacturing	85	85
Scale manufacturing	11	11
School supplies	12	12
Schools and universities	39	39
Screen manufacturing	2	2
Sewing machines, manufacturers and dealers	23	23
Ship building	1	1
Sheet metal works and tinnerns	69	69
143 Silo construction	10	10
Soap and washing powder manufacturing	47	47
Specialty manufacturing, hardware, woodenware	64	64
Steam railroads	3,734	3,734
Steel and wire	250	250
Stone (quarries and cutting)	263	263
Stove manufacturing	157	157
Sugar manufacturing	16	16
Surgical and hospital supplies	37	37
Stencil, seals, etc.	21	21
Syrup manufacturing	2	2
Telephone and telegraph	269	269
Threshermen	94	94
Theaters	10	10
Toilet articles and barbers' supplies	1	1
Tool manufacturing	561	561
Toy manufacturing	52	52
144 Transfer, storage and warehouse	221	221
Trunk manufacturing	14	14
Typewriting machines and stenotypes	16	16



Classified as to industry.	Total number of accidents.
Undertakers .....	7
Veneer manufacturing .....	126
Watch manufacturing .....	3
Waterway transportation .....	2
Yarn manufacturing .....	1
Miscellaneous or unclassified .....	192

Complainant then introduced in evidence the statistical report of the Industrial Board of Indiana of accidents occurring to employees classified by employments for the year ending September 30, 1917, as appearing in the Indiana Year Book of 1917, as follows:

145                      Accidents.

*Statistical Report of the Industrial Board.*

Classified by Occupation and Employment.

Classified as to industry.	Total number of accidents.
Abattoir .....	105
Aeroplanes .....	2
Agricultural implements .....	20
Artificial limb company .....	25
Auto mfr., includes body top repairs and parts .....	3,206
Awning and tent manufacturers .....	17
Agriculture .....	67
Athletic goods manufacturers and dealers .....	2
Amusements .....	7
Banks and trust companies .....	20
Bag manufacturers .....	15
Bakeries .....	150
Baking powder manufacturers .....	5
Basket manufacturers .....	52
Barber shops .....	7
Bed spring manufacturers .....	30
Bicycles, motorcycles and parts .....	57
146    Bill posting .....	5
Blacksmith .....	36
Boiler manufacturers .....	190
Boots and Shoes, manufacturers and dealers .....	48
Bottlers .....	84
Box manufacturers (wooden and paper) .....	295
Brass foundries .....	104
Breweries .....	279
Books and stationery .....	4
Brick, tile manufacturers and sewer pipe .....	428
Brush and broom manufacturers .....	40

Classified as to industry.	Total number of accidents.
Bowling and billiards.....	8
Burial vaults .....	2
Butchers and meat markets.....	108
Buildings (office and apartment).....	30
Boats, barges, manufacturing and repairs.....	13
Braid manufacturers .....	7
Button manufacturers.....	13
Can manufacturers .....	371
147 Canning and preserving.....	1,489
Car manufacturing and repairs.....	16
Cattle feed manufacturers .....	516
Carpets, rugs, manufacturers and dealers.....	516
Carriage and wagon manufacturers and dealers.....	569
Castings .....	421
Cement manufacturers.....	282
Chain manufacturers .....	242
Chemicals, manufacturers and dealers.....	1
China manufacturers and dealers.....	22
Cigars and tobacco, manufacturers and dealers.....	12
Cistern and well drillers.....	30
Cleaners and dyers.....	107
Clothing manufacturers (men's and women's).....	313
Coal dealers.....	2,170
Coal mining .....	9
Coffee, tea and spices.....	45
Coffin manufacturers and undertakers' supplies.....	364
148 Commercial heat, light and power.....	35
Commission merchants .....	71
Confectioners .....	185
Clay manufacturers and potteries.....	4
Churches .....	7
Cemetery associations.....	72
Contractors, railroad .....	1,892
Contractors, general .....	4
Contractors, asbestos .....	515
Contractors, bridge and structural iron.....	180
Contractors, carpenter.....	113
Contractors, cement.....	46
Contractors, electrical .....	4
Contractors, elevators.....	24
Contractors, brick .....	..
Contractors, lathers .....	..
Contractors, marble workers.....	..
Contractors, metal workers.....	36
Contractors, painters, decorators and paperhangers.....	55
149 Contractors, plumbers and steamfitters.....	179
Contractors, plasterers .....	23
Contractors, stone masons.....	15

Classified as to Industry.	Total number of accidents.
Contractors, tile workers.....	1
Contractors, roofing, slate, etc.....	17
Contractors, tunnel, subway and sewer.....	124
Contractors, river and harbor.....	158
Contractors, road and street.....	346
Contractors, excavating.....	19
Cooperage.....	68
Cotton mills—textile manufacturing.....	109
Creameries.....	32
Creosoting.....	47
Corn products.....	122
Distillery.....	105
Dairy products.....	77
Dressmakers.....	...
Druggists.....	45
Dry goods and general merchandise.....	242
150 Dry kiln, accessories, etc.....	7
Electrical and gas fixtures.....	371
Electric railways.....	179
Elevator manufacturers.....	19
Engravers.....	6
Express companies.....	195
Enamelware manufacturers.....	75
Excelsior.....	16
Explosive manufacturers.....	42
Envelope manufacturers.....	7
Food product manufacturers.....	14
Fence manufacturers.....	66
Film manufacturers.....	4
Fertilizer manufacturers.....	41
Florists.....	28
Flour and grist mills.....	118
Forging.....	699
Foundry.....	1,987
Forestry, landscape, architecture and nurseries.....	11
Furnace manufacturers.....	30
151 Furniture manufacturers and dealers.....	1,421
General cleaners (house and stores).....	6
Fire-proof articles.....	3
Garages.....	194
Garbage disposal.....	11
Gas manufacturers.....	448
Glass manufacturers.....	972
Glove manufacturers.....	42
Glue manufacturers.....	22
Grocers, wholesale and retail.....	326
Grain elevators and dealers.....	145
Homes—aged, orphans, soldiers, etc.....	3

Classified as to industry.	Total number of accidents.
Hardwood floors .....	11
Handle manufacturers .....	86
Hardware .....	148
Harness and saddlery .....	38
Hat and cap manufacturers and dealers .....	4
Hides and leather (tannery) .....	60
Hospital .....	16
152   Hotels .....	139
House moving and wrecking .....	39
Hauling .....	99
Ice cream manufacturers .....	48
Ice manufacturing and cold storage .....	343
Insurance .....	6
Iron and steel .....	3,577
Insulation manufacturers .....	72
Jewelers, manufacturers and dealers .....	7
Junk dealers .....	192
Knitting mills .....	58
Laundries .....	188
Lawyers .....	2
Liquor dealers .....	62
Live stock commission merchants .....	23
Livery .....	52
Locomotive headlights .....	47
Lumber manufacturers and dealers in building material ..	541
Lime manufacturers .....	76
153   Lodges and clubs .....	17
Machinery and machine shops .....	2,748
Metal refining .....	152
Marble, tile and granite monuments .....	25
Match manufacturers .....	9
Mattresses .....	10
Meat packers .....	602
Millinery .....	16
Mineral water .....	2
Mirror manufacturers .....	20
Musical instruments .....	142
Municipal corporations .....	28
Newspapers .....	46
Novelty manufacturers .....	51
Oil refining .....	603
Overall manufacturers .....	25
Optical .....	7
Quilt manufacturers .....	1
Pharmaceutical and biological manufacturers .....	70
Paper board manufacturers .....	102
154   Paint and varnish manufacturers .....	41
Paper manufacturers .....	359

Classified as to industry.	Total number of accidents.
Physician .....	4
Photographers .....	9
Pattern works, wood and metal .....	8
Planing mills .....	165
Plating .....	37
Plumbers' supplies .....	28
Polish manufacturers .....	1
Poultry dealers .....	55
Printing and publishing .....	130
Pump and tank manufacturers .....	481
Restaurants .....	97
Real estate, rental and loans .....	36
Roofing .....	90
Rubber manufacturing and vulcanizing .....	148
Rope and twine manufacturers .....	67
School supplies .....	14
Schools and universities .....	52
Saw mills .....	172
Saw manufacturers .....	176
155   Scale manufacturers .....	16
Screen manufacturers .....	1
Seed dealers .....	2
Sheet metal works, tanners .....	191
Soap and washing powder manufacturers .....	38
Specialty manufacturers—hardware and woodenware .....	226
Steam railroads .....	3,812
Stone (quarries and cutting) .....	692
Steel and wire manufacturers .....	475
Stove manufacturers .....	215
Sand and gravel .....	77
Sewing machine manufacturers and repairs .....	31
Silo construction .....	15
Sugar manufacturers .....	8
Stencils, seals, etc. ....	29
Syrup .....	..
Surgical and hospital supplies .....	40
Safe manufacturers .....	3
Thread manufacturers .....	..
156   Telephone and telegraph .....	405
Theaters .....	18
Railway signals .....	8
Tool manufacturers .....	539
Trunk manufacturers .....	27
Typewriting machines and stenotypes .....	62
Transfer and storage warehouses .....	237
Toy manufacturing .....	36
Toilet articles and barbers' supplies .....	..
Umbrella manufacturers .....	..

Classified as to industry.	Total number of accidents.
Undertakers .....	18
Upholstering .....	..
Threshermen .....	25
Veneer manufacturers .....	237
Warehouse .....	4
Waterway transportation .....	4
Water companies .....	32
Yarn manufacturers .....	1
Miscellaneous or unclassified .....	105

NOTE.—Above statistics are taken from the official reports of the Industrial Board of Indiana, showing Dismemberments and aggregate number of employees injured in the several industries in Indiana for the periods referred to.

157 P. H. PENNA, on Direct Examination:

Has been Commissioner of Coal Operators' Association of Indiana for 21 years; acting for operators during that time has made contracts, interpreted and enforced them in connection with the Mine Workers' Union; that since 1906 biennially up to 1916 and since then more frequently the coal miners and coal operators have met to agree on a scale of wages. Witness was present when the last three or four scales were agreed upon. Wages are fixed on the tonnage basis in certain cases and by the hour or day in other cases; that in some mines there are no machines and the work is then called pick mining. When there are machines used then the employees are loaders and machine men. Other men in the coal mining business are engaged in transportation of coal in mines; they are called drivers, motormen and track men. They are spoken of as day-men. That under the present scale of wages the ordinary coal miner under ordinary conditions can earn from \$7.50 to \$8.00 per day for a working day of supposedly eight hours, but in fact less; that under favorable conditions under the present scale of wages there is a possibility of his earning much more, and many do earn much more than the reports filed for income taxes will show several thousand coal miners in Indiana that earned over \$2,500.00 for the year. That

158 the last scale has been effective from November 1, 1917; that the amounts paid under this agreement which was not made at a regular biennial period are more than under the last agreement; that the last preceding agreement became effective April 16, 1917, and was not made at a regular biennial meeting; that the last biennial scale fixed was in March, 1916; that the two increases in the scale fixed for the miners following the last biennial meeting were requested by the miners on the claims that conditions had so changed that wages should be increased, and the coal operators met these increased wages.

Witness was a member of the United Mine Workers' Union at one time; that so far as he knows, all men engaged in the coal mining industry in Indiana are members of the United Mine Workers of America; that their wages are fixed by collective bargaining between the Union on the one side and the operators on the other, and that this condition has existed with very few exceptions since 1886. That witness knows of no companies engaged in the business of mining coal in Indiana which employ less than five persons; that when the scale of wages was fixed in 1916 it was by its terms to continue from April 1, 1916, to March 31, 1918.

159 On cross-examination:

Witness is the secretary, treasurer and commissioner of the Operators' Association. That the miners were not 100 per cent organized in 1886; that since January, 1900, the Indiana Coal Operators' Association has been in existence. Prior to that time they used to meet and elect temporary officers for immediate emergencies, but not any association. Witness was president of the national organization of the Mine Workers in 1895 or '96. The wage agreement effective from April 1st, 1916, to March 31st, 1918, was made prior to the war. The Washington Agreement was effective probably in October, 1917; that representatives of the miners and operators had three meetings with Doctor Garfield, the Fuel Administrator; that about that time the price of coal was increased by the Government; that the basis of the miners' demands for increased wages was the increased cost of living.

That certain outside men employed by the coal company get approximately four dollars and sixty-five cents a day; that day men are those who are engaged in transportation, taking the coal from the miner after he loads it in a car and taking it out to the shaft for hoisting; this includes the mule drivers, motormen, track layers and repair men and timber men; that flat trimmers work outside; they get about four dollars and eighty-five cents a day; sometimes four dollars and thirty-five cents; that there is a different scale for pick work and machine work, owing to the tonnage produced. Machine runners are paid by the ton; so are entry drivers. Practically all coal mining is piece work, and when the witness testified a coal miner could earn seven dollars and a half a day, that is dependent upon whether the mine runs or not; that since the signing of the armistice about one-third of the mines have been in operation; that is, that about 33 per cent of the potentiality has been working, until recently, and now is close to 50 per cent. Several mines have suspended operation altogether and closed down; that at the present time in the bituminous field the coal mines are operating about three days a week. That the present wage agreement is contingent upon the signing of the peace and does not extend beyond the 1st of April, 1920, and that upon the signing of peace witness expects a new wage scale will be attempted. The Lower Vein Coal Company is a member of the Coal Operators' Association.

161 On redirect examination witness testified:

That the wages of employees of coal mines, except miners, are fixed and do not vary; such wages range from four dollars and sixty-five cents to five dollars and fifty cents a day for men; that as to coal miners who work on the contract basis a conservative estimate of their ability to earn would be seven dollars and a half to eight dollars a day; that the effort is made to have one helper or day man for each two coal miners; sometimes the coal miners and the helpers are about even in a mine, but this is an exceptional instance. Witness is unwilling to say that on a general average there are two coal miners to one day man, but that is the ideal, but the percentage of day men is greater as a general proposition than one to two coal miners.

On re-cross-examination witness testified:

Trappers when they are men get five dollars a day; when they are boys they get two dollars and sixty-five cents a day. Until the enactment of the recent child labor law, trappers were usually boys below the age of sixteen and their work consisted in opening doors which are fixed for ventilating purposes. These doors must be opened and closed when trips are made through them to transport the coal.

162 That in Indiana prior to the fixing of the new wage scale, operators were not giving bonuses to their men. How this was outside of Indiana, witness does not know.

#### *Stipulation.*

District Number Eleven, United Mine Workers of America, which are the operatives of mines in the Indiana bituminous field employed two attorneys to represent the legal affairs of the District Organization of District Number Eleven, United Mine Workers of America, to give counsel and advice to different members of the organization desiring it, there being no compulsion upon any member of the organization to employ the Legal Department or to use the services of the Legal Department, for a certain stipulated compensation to be paid the attorneys by the organization, such employment to begin upon the 15th day of September, 1918, to continue for at least one year from that date, and assessments were made upon each member of ten cents per month, and that it was a part of the duties of the attorneys so employed to prosecute for any miner or his dependents, if they desired to avail themselves of the services of said attorneys, personal injury suits to recover for personal injuries or death; that when such suits were so prosecuted the entire amount recovered

163 would go without abatement to the injured miner or his dependents, subject of course to the contribution of ten cents per month made by each miner to the Legal Department for its services; that there are two coal fields in Indiana known as the Block Field and the Bituminous Field; that the Block Coal Field has not



over ten or twelve mines and about one thousand employees; that District Number Eleven of the United Mine Workers' Union comprises all the bituminous coal fields of Indiana and all the coal mining in Indiana except block coal mining.

HOWE S. LANDERS, re-called, testified:

That during the year ending October 30th, 1918, there were 46,302 men employed in and around machine shops and 30,678 employed in automobile manufacturing and repairing, including bodies and tops.

That with reference to the statistics which this witness has given as to the number of employees in certain specified occupations in Indiana and the number of injuries to such employees, that outside of the Transfer, Storage and Warehouse business, the other employments testified about were in the main conducted by employers having more than five men in their employment, and that the inclusion in the accidents to employees in establishments where less than five men were employed, whereas in the number of men actually employed the reports do not include establishments where less than five men are employed, will not substantially affect the percentage of injuries given by the witness in his statistics.

On cross-examination witness testified:

Employers engaged in the Iron and Steel Industry, those operating machine shops and those in the auto industry substantially all operate under the Compensation Law. That all accidents should be reported to the Industrial Board; that from witness' knowledge only about 10 per cent of the employees of mine operators were under the Compensation Law of Indiana; that employers of 90 per cent of the men engaged in the coal mining business rejected the Compensation Law; that coal operators who had rejected the provisions of the Compensation Law contended that they were not required to report their accidents in accordance with the provisions of Section 67 of the Compensation Act and in the main did not report those injuries; that it is witness' impression that the number of injuries concerning which he testified as to the mining industry were largely from the 10 per cent of the miners who were under the Compensation Act; that those operators who rejected the law persisted in their refusal to report injuries to their employees until the Industrial Board had certified the question to the Appellate Court and had obtained a ruling that all employers, whether under the Compensation Law or not, should report such injuries.

## On redirect examination:

That in answering questions on cross examination witness' impression was confined solely to the number of employers who were reporting accidents. Those employers who did not report might not have had accidents; does not know whether they did or not. That as to all employers in Indiana, witness has had complaint from injured men that accidents to them have not been reported. It might happen that the company did not know the man was injured or neglected to report it or forgot to report it; that witness' impression is that there were a number of coal operators that did not report accidents, but that he could not testify to any figures; that the railroad companies were the ones who utterly failed and refused to report accidents; that it is witness' impression that there were more coal operators who did not report than employers in other industries; that the decision by the Appellate Court referred to was rendered January 7th, 1918.

P. H. PENNA, recalled, testified:

Witness is familiar with the practice of coal mining companies generally in Indiana with respect to reporting accidents to the Industrial Board. In so far as witness knows such reports were in fact made; that it has been declared by mine inspectors that they did not have jurisdiction over a coal mine that employed ten or less men; that it may be in the hurly burly of winning the war with so many little mines being operated to get out a few tons of coal that there were some of those people who were not regular coal operators who may have been neglectful of making reports; that witness does not believe that there is a single substantial coal operator in Indiana who has failed to report.

## Cross-examination:

Witness is speaking of reports to the Inspector of Mines, but that the Industrial Board has now taken over this department; that coal operators make reports of their injuries to the Mining Department.

This is what witness referred to especially. Witness is not absolutely familiar with what they have done with reference to reports, except that the operators have always reported their accidents and injuries to the Mining Department, but that operators having ten or less employees did not always report; that the usual custom is not to report except in those cases where the operation is under the supervision of the Mining Department. Witness has no personal supervision of the reports.

HENRY MOORE.

## Direct examination:

Practicing lawyer; represents various coal mining companies in Indiana; does not know of any contention ever being seriously enter-

tained by any substantial coal operator (that coal operators were not required to report accidents; so far as the companies represented by witness are concerned it has always been the custom to report every accident to the Industrial Board. Will not say that all were reported to the Industrial Board, but they were reported either to the Inspection Department or to the Industrial Board. He always considered that the law was complied with to whomsoever the report was addressed; that the Mining Inspection Department was taken over by the Industrial Board when it was created in 1915.

168 Cross-examination:

Witness represents the J. K. Dering Coal Company and the Vandalia Coal Company especially, and has represented others; that reports of injuries are sent from the local office and at the same time are reported to the main office. Witness has seen reports from time to time. In death cases a telegram is always sent and in minor injuries a letter.

HOWE S. LANDERS, recalled:

That in arriving at the number of accidents and injuries in the various industries witness takes his figures from accident reports to the Industrial Board; that there were two reports; there was an old report to the Mining Department which was intended to enable the Mine Inspector to prevent accidents and safe-guard employees; the accident report to the Industrial Board was on a different form, intended to bring to the Board information to pass upon the question of liability for compensation, as well as to prevent accidents. The Industrial Board left the two reports in full force and effect; required a report to the Mining Department on the old form and the  
169 report to the Industrial Board on the accident report form.

The figures made by witness were based on the accident report to the Industrial Board. This refers to the coal mining industry, because no reports were required to the Mining Department from other industries. That at first the mine operators did not report their accidents unless they were operating under the Compensation Law. Later that situation was changed and the change occurred at the time of the decision of the Appellate Court above referred to. After that decision the coal operators generally reported.

That the figures as to the number of injuries in mines for the period from September, 1917, to October, 1918, were taken from reports made directly to the Industrial Board and not to the Mining Department.

Plaintiff then introduced in evidence Table of Accidents in the Mining Industry showing fatal, permanent, serious and slight injuries for the period ending September 30th, 1918, as follows:

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## TABLE OF ACCIDENTS No. 1.

Arranged according to occupation of the injured party, the fatal, permanent, serious and slight accidents being shown separately.

Occupation of injured party.	Fatal.	Perma- nent.	Serious.	Slight.	Total.
Miners .....	42	1	103	315	461
Machine runners .....	2	..	24	52	78
Machine helpers .....	2	..	14	36	52
Motormen .....	3	..	13	37	53
Drivers .....	12	..	80	261	353
Roadmen .....	1	..	5	26	32
Jerry men .....	15	..	20	77	112
Trappers .....	2	..	8	14	24
Cagers .....	..	..	15	25	40
Pumpers .....	1	..	5	4	10
Electricians .....	2	..	1	14	17
Trip riders .....	7	..	36	91	134
Car couplers .....	..	..	9	19	28
Bratticemen .....	..	..	3	2	5
Boss drivers .....	1	..	1	6	8

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Mine bosses .....	3	..	2	4	9
Room bosses .....	..	..	1	3	4
Fire bosses .....	..	..	1	3	4
Superintendents .....	..	..	1	1	2
Shot firers .....	9	..	14	11	34
Engineers and firemen .....	..	..	2	3	5
Flat trimmers .....	1	..	3	16	20
Timbermen .....	4	..	10	19	33
Weighmen .....	..	..	..	2	2
Top hands .....	6	..	9	30	45
Top bosses .....	1	..	1	2	4
Blacksmiths .....	..	..	1	8	9
Miscellaneous .....	..	..	9	4	13
Totals .....	114	1	391	1,085	1,591

That the figures in the above table show the reports of accidents to the Mining Department and the Industrial Board; that these reports are from mines employing ten or more people.

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*Defendants' Evidence.*

Defendants introduced in evidence the following table from Industrial Accident Statistics of the United States Department of Labor, published in March, 1915:

TABLE 1.

*Estimate of Fatal Industrial Accidents in the United States in 1913  
by Industry Groups.*

(The fatality rates used in this estimate are approximations. They are slightly at variance with the exact rates for certain industries, particularly mining, for the year 1913. For metal mines in 1913 the fatality rate, according to the Bureau of Mines, was 3.54 per 1,000; for coal mines, 3.73; for quarries, 1.72. In the estimate it is assumed that for these industries in particular the approximate rates indicate more accurately the average risk for a period of years, it being considered that even the official rates fall short of absolute accuracy and completeness in the absence of a Federal law making the reporting of mine accidents compulsory upon all operators. The estimate was arrived at before Technical Paper 94 of the Bureau of Mines was published.)

Industry group.	Number of employees.*	Fatal industrial accidents.*	Rate per 1,000.
<b>Males.</b>			
173 Metal mining.....	170,000	680	4.00
Coal mining.....	750,000	2,625	3.50
Fisheries.....	150,000	450	3.00
Navigation.....	150,000	450	3.00
Railroad employees.....	1,750,000	4,200	2.40
Electricians (light and power).....	68,000	153	2.25
Navy and marine corps....	62,000	115	1.85
Quarrying.....	150,000	255	1.70
Lumber industry.....	531,000	797	1.50
Soldiers, United States Army	73,000	109	1.49
Building and construction.	1,500,000	1,875	1.25
Draymen, teamsters, etc....	686,000	686	1.00
Street railway employees...	320,000	320	1.00
Watchmen, policemen, firemen.....	200,000	150	.75
Telephone and telegraph (including linemen).....	245,000	123	.50
Agricultural pursuits, including forestry and animal husbandry...	12,000,000	4,200	.35
174 Manufacturing (general).....	7,277,000	1,819	.25
All other occupied males...	4,678,000	3,508	.75
All occupied males.....	30,760,000	22,515	.73
All occupied females.....	7,200,000	540	.075

\* Partly estimated.

175 EARL YARLING, on direct examination, testified:

That he was a clerk of the Industrial Board of Indiana; that he had made a computation of figures from reports to the License Department of the Industrial Board as to the number of employees of the Iron and Steel Industry of Indiana, and also compiled the number of employees and accidents in Machinery and Machine Shops, Iron and Steel Industry, Automobile Manufacturing and Repairing, and furnished the following table of accidents, number of employees and percentage of those injured:

	Accidents.	Employees.	Per cent Injured.
Iron and Steel industry.....	3,446	60,547	5.6 plus
Machinery and Machine Shops	2,831	47,706	5.8 "
Automobile Mfg. & Repairing.	2,996	29,366	7.4 "
Coal mining.....	2,162	26,294	8.2 "

On cross-examination:

That in the Steel and Iron and Allied Industries such as Metal Finishers, Saw Manufacturers, Tool Manufacturers, Foundries, Castings and Forgings there were a total of 60,547 employees; that witness does not know for sure whether there are 27,720 employees in the Iron and Steel Industry proper; that as to concerns that were engaged in the business of metal finishing, if it was steel and iron metal finishings, the employees were included among those engaged in the Iron and Steel business, and this is true of Saw Manufacturing, Stove Manufacturing and foundries; that on the list prepared by witness the total number of employees in the Iron and Steel and Allied Industries is 60,547; that the number of accidents in the Iron and Steel Industry proper as shown by the reports to the Industrial Board is 3,446; in the Forging business 362; Stove Manufacturing 157, Agricultural Implements 243, Foundries 997; Saw Manufacturing 85; Steel and Wire 250; this making the total injuries in the Iron and Steel Allied Industries 5,540 and the percentage of injuries to the number of men in the business 9.1 per cent; that a memorandum prepared by witness showing these injuries in the Iron and Steel and Allied businesses, the number of employees in such businesses and the percentage of injuries reads as follows:

177 COMPLAINANT'S EXHIBIT 21.

*Memorandum of Witness Yarling.*

Iron & Steel .....	3,446	
Forging .....	362	
Stove Manufacturing .....	157	
Agri. implements .....	243	
Foundry .....	997	
Saw Mfg. ....	85	
Steel and wire .....	250	
		5,540 60,547
	5,540.00 (60,547	
	5,449.23 09.1 X	
	90.770	
	60.547	
	30.223	

178 That witness included on the one side in the number of employees all persons engaged in the Steel and Iron business and in the various allied businesses, and on the other hand in order to figure the percentages correctly he ought to have figured all the injuries without duplication to people in those businesses and that in figuring his total injuries in the Steel and Wire business of 3,466 he included only those injuries reported under the head of "Iron and Steel" and did not include the number of accidents reported to the Industrial Board in Allied Industries; that witness figured the percentages of injuries to employees in the following businesses: Furniture Manufacturing and Repairing, Gas Manufacturing, Glass Manufacturing, Stone Quarries, Oil Refining, Veneer Manufacturing, General Contracting, Explosives and Cement Manufacturing.

That witness has heard the evidence of Mr. Landers and has no suggestions to make with reference to any of the percentages of injuries to employees in the above mentioned industries.

Defendants introduced in evidence Table of Accidents No. 3 from the report of the Industrial Board of Indiana for the year ending September 30th, 1918, as follows:

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## TABLE OF ACCIDENTS No. 3.

Table Showing Number of Tons of Coal Produced, Number of Persons employed, the number of fatalities, the number of tons produced per fatality, and the number of killed per thousand employed, for each year from 1898 to 1918, inclusive.

Year.	Tons.	Produced.	Employed.	Fatalities.	Tons per fatality.	Killed per 1,000 employed.
1898	....	5,146,920	No report.	22	233,950	....
1899	....	5,864,975	7,366	15	390,997	2.04
1900	....	6,283,063	8,858	18	349,059	2.03
1901	....	7,019,203	10,296	24	292,466	2.33
1902	....	8,763,197	13,139	24	365,133	1.83
1903	....	9,992,563	15,128	15	181,683	.99
1904	....	9,872,404	17,838	34	290,304	1.91
1905	....	10,995,972	17,856	47	233,956	2.63
1906	....	11,422,027	19,562	31	368,450	1.60
1907	....	13,250,715	19,009	53	250,013	2.79
1908	....	11,997,304	19,092	45	266,606	2.36
1909	....	13,692,089	18,908	50	273,841	2.64
1910	....	18,125,244	21,171	51	355,397	2.41
180						
*1911	....	9,571,289	20,778	33	290,039	1.60
1912	....	14,204,578	21,230	37	383,908	1.74
1913	....	17,246,565	21,683	59	292,315	2.72
1914	....	16,635,178	22,110	49	339,493	2.21
1915	....	15,696,921	20,702	54	284,202	2.60
1916	....	18,238,591	21,300	48	379,969	2.25
1917	....	24,013,021	23,940	66	363,834	2.75
1918	....	28,795,682	27,032	114	292,067	4.08

181 SAMUEL R. ARTMAN, on direct examination, testified:

Has been a member of the Industrial Board of Indiana since March 16, 1917. The following accidents have been reported to the State Board:

Year ending August 31, 1916,	36,166
" " " " 1917,	42,452
" " " " 1918,	37,114
From September 1, 1918, to December 31, 1918,	11,916

\*1911 report for nine (9) months only.



That in dealing with coal mining injuries there are three classes that stand out very prominently that are very severe,—burns about the face, injuries to the back and spine and injuries to the sacro-iliac region that burns about the face in the coal mining industry are the most severe of any industry in the state and that injuries to the back and sacro-iliac region are confined largely to the coal mining industry and are peculiar to it and very severe; that that disfigurements in the coal mining business are frequent.

That in the year 1918, of the total industrial accidents in Indiana, one out of every  $17\frac{1}{4}$  occurred in coal mines; that is, that a little less than 6 per cent of the total industrial accidents were in coal mines; that of the accidents happening in Indiana there is about 10 per cent for which there is any liability whatever on account of negligence.

On cross-examination:

That there are industries other than the coal business in which the proportion of dismemberments is larger; that there are more in the Iron and Steel Industry in Indiana; that this industry is second in the proportion of burns, and that the manufacturing of chemicals is third. That since witness has been a member of the Industrial Board there has been an explosion in the mines of Indiana; that witness recalls a man named Reynolds who was severely burned in a coal mine; was burned all over the head and face and was completely blind in both eyes; recollects other people burned, but does not recall their names. Cannot stand a cross examination on figures; has an impression that coal mining heads the list as to burns; that it is perfectly possible by examining the records of the Industrial Board to ascertain exactly the percentage of burns in each of the occupations.

Defendants introduced in evidence Exhibit E, which is from the report of the Industrial Board of Indiana for the year ending September 30, 1918, showing fatal injuries for that period, classified by industries:

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*Fatals.*

Classified as to industry.	Total number of accidents.
Agricultural implements .....	2
Agriculture .....	2
Auto manufacturing, includes top, body, parts, etc.....	2
Amusements .....	2
Bill posting .....	67
Brass foundries .....	1
Boilers .....	1
Bottlers .....	1
Brick, tile manufacturing and sewer pipe.....	2
Box manufacturing .....	2
Bakeries .....	3
	3

Classified as to industry.	Total number of accidents.
Buildings (offices and apartments) .....	2
Commission merchants .....	2
Car manufacturing and repairs .....	4
Chemical manufacturers and dealers .....	2
Coal dealers .....	2
Cement manufacturing .....	2
Coal mining .....	69
Canning and preserving .....	1

Classified as to industry.	Total number of fatalities.
184 Cement manufacturing .....	2
Contractors, railroads .....	2
Contractors, general .....	21
Contractors, bridge, structural iron .....	6
Contractors, painters, decorators and paperhangers .....	4
Contractors, carpenters .....	1
Coffin manufacturing and undertakers' supplies .....	1
Cookery .....	2
Cleaners and dyers .....	1
Coffee, tea and spices .....	1
Commercial light, heat and power .....	3
Cloth manufacturing .....	1
Carriage and wagon parts and repairs .....	1
Clay manufacturing and potteries .....	2
Cottages .....	2
Dry goods and general merchandise .....	3
Dry products .....	1
Electric railways .....	5
Foundry .....	3
185 Forging .....	1
Grain elevators .....	1
Glass manufacturing .....	4
Garbage disposals .....	1
Hardware .....	2
Hotels .....	2
Iron and steel .....	46
Insulation manufacturing .....	1
Ice manufacturing and cold storage .....	1
Lumber manufacturers and dealers .....	3
Laundries .....	1
Liquor dealers .....	1
Machinery and machine shops .....	8
Meat packers .....	1
Oil refining .....	1
Pump and tank manufacturing .....	3
Rubber manufacturing and vulcanizing .....	1
Restaurant .....	1

Classified as to industry.		Total number of fatalities.
Sand and gravel .....	5	
Saw mills .....	1	
186 Steam railroads .....	47	
Stone (cutting, quarries) .....	2	
Stove manufacturing .....	1	
Steel and wire manufacturing .....	1	
Soap and washing powder manufacturing .....	1	
Telephone and telegraph .....	2	
Transfer, storage and warehouses .....	2	
Miscellaneous or unclassified .....	1	
Escaping steam .....	3	
Acids .....	1	
Elevators .....	6	
Hoists, cranes, derricks .....	8	
Disease .....	2	
Caught between objects .....	27	
Poisoned by brass, cement, etc. ....	1	
Gases-asphyxiated .....	2	
Powder and dynamite explosions .....	3	
Boiler explosions .....	1	
187 Fall from poles .....	1	
Electricity .....	18	
Hot substances .....	4	
Fire .....	2	
Fall through openings .....	1	
Collapse of support .....	6	
Hit by fall of object .....	40	
Hit by vehicles, cars, engines .....	38	
Animal kicks, bites, etc. ....	3	
Fall from scaffold, benches, etc. ....	1	
Fall from wagons, cars, etc. ....	4	
Fall of coal, slate, shale, etc. ....	24	
Gas explosions, gas flames .....	17	
Fall into excavations .....	1	
Trucking and hauling .....	1	
Dropping and handling .....	1	
Fall down shafts .....	1	
Motor and hand cars .....	2	
Miscellaneous or unclassified .....	31	
188 Firearms .....	1	
All other falls .....	22	
Striking against sharp edges .....	1	
Collisions, trains, cars, etc. ....	74	
Bumping into stationary objects .....	3	
Dump cars and pit cars .....	2	
Coupling cars, braking, switching .....	3	

## Operating and Feeding:

Saws .....	1
Power shears .....	1
Lathes .....	2
Miscellaneous machines .....	2
Planers .....	1

## Oiling and Inspecting:

Miscellaneous machines .....	1
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## Breaking of Machine or Work:

Emery wheels, grindstones .....	1
Hoists, cranes, derricks .....	1

189 CAIRY LITTLEJOHN, on direct examination, testified:

Is Deputy Mining Inspector of Indiana; his duties are to supervise the inspection of coal mines, compare the reports, see as far as possible that the law governing mining industries of the state is complied with. That there are about 213 mines at present under the Department of Inspection. The average coal mine in Indiana consists of a shaft and a tippie built over it for the purpose of hoisting coal. Under the tippie is a railroad track. Directly over the shaft are hoisting gears and attached to the main portion of the tippie is the necessary equipment for the screening of coal and dumping it on cars. Underground workings consist of entries, break-throughs, over-casts and rooms. Some of the mines have electric motors to propel the empty and full cars; others do not. Dynamoes are built in mines operated electrically for the generation of electricity. The motors run at a high rate of speed. That the roofs of these mines are sometimes not supported; that sometimes they are propped by timbers, pillars of coal and cross bars placed over the ends of two timbers. That electricity is got into the mines through wires. In many instances these wires are uninsulated; that in mines where they have motor haulage, trolley wires are used, which in most places are guarded.

That many of the Indiana mines emit and generate certain inflammable and noxious and dangerous gases. That black damp is called choke damp; it consists of one part carbon and two parts oxygen. It is non-explosive and occurs in badly ventilated mines. That there is a damp known as white damp and methane. Sometimes these gases collect in pockets and explode; that the results of these explosions are destruction of property and serious and fatal injuries to individuals. Sometimes an explosion causes more than one fatality. Occasionally explosions occur in mines which cause great catastrophes.

That there are quite a few accidents, some fatal, among the men who work around the tipples and on top of the mines; that there were six such fatal accidents on top of the mines during the year ending September 30th, 1918. That there has been one explosion

in a mine in Indiana since January 16, 1919. Two men were killed. Since that time there have been no explosions of a serious character reported to the witness.

Cross-examination:

That there are nine, twelve and fourteen foot entries in the mines of Indiana. That trolleys in mines operated electrically are placed a great many times just a little beyond the center of the road; that the law prescribes that there shall be a traveling way along the side of the entry kept free from obstruction. That a break-through is an intersection between two entries or rooms for the purpose of transmitting the air,—for the purpose of circulating pure air. The Indiana law prescribes 100 cubic feet of pure air for each miner and 300 cubic feet for each mule. That if fresh air is blown properly into a mine there will be no black damp. That there are mines known as gaseous mines which are well known both to the miners and the operators. White damp is the result of incomplete combustion. It leaks or seeps out from the coal in small quantities. Rapid firing of shots sometimes produces white damp; If the law governing the firing of shots is complied with and the law governing circulation of pure air, still you might possibly have some trouble with white damp originating from the burning of black powder and stirring up of dust or a "windy shot."

That from the shaft of a coal mine, generally, main entries go in two directions and cross entries are driven from the main entries, usually at right angles. Then the rooms are worked off from the cross entries and break-throughs are between the rooms and between entries. If the law is complied with there is a complete circulation of air at all times.

Defendants then introduced in evidence Table of Accidents No. 2, showing the fatal, permanent, serious and slight injuries to miners for the year ending September 30th, 1918, classified as to the cause of the injury, which is as follows:

## TABLE OF ACCIDENTS NO. 2.

Classified According to the Cause of the Injury, the Fatal, Permanent, Serious and Slight Accidents Being Shown Separately.

Cause of accident.	Fatal.	Perma- nent.	Serious.	Slight.	Total.
Fall of coal.....	3	1	30	138	172
Fall of slate and rock.....	49	..	88	162	299
Mine cars.....	15	..	135	406	556
Mining machines.....	..	..	37	85	122
Mine motors.....	3	..	13	39	55
Explosion of powder.....	8	..	9	1	18
Gas and gas explosion.....	14	..	20	26	60
Exploding shots.....	3	..	7	4	14
Mine cages.....	3	..	13	16	32
Falls into shaft.....	3	..	2	..	5
Other falls.....	2	..	..	24	26
Mine mules.....	..	..	26	52	78
Electricity.....	6	..	..	12	18
Fall of coal in shaft.....	..	..	1	..	1
Other falling objects.....	..	..	4	..	4
194 Stepping on nails.....	..	..	..	28	28
Handling heavy ob- jects.....	..	..	..	..	..
Hand tools, etc.....	..	..	..	61	61
Railroad cars.....	4	..	..	1	5
Miscellaneous.....	1	..	6	30	37
Totals.....	114	1	391	1,085	1,591

CLIFFORD HOFFMAN, on direct examination testified:

Employed by Indiana Coal Operators' Reciprocal Organization, which has for its purpose the inspection of mines, the investigation of accidents and the adjustment of personal injury claims. That the mine boss or superintendent of the mine sends a report to this organization of accidents that occur in and around a mine. These reports sometimes come in in a day or two; sometimes in a week or two. That at the present time approximately 115 or 120 mines are members of this organization. That approximately 2,500 accidents were reported to this association between the 1st day of June 1918 and the last day of June 1919.

Cross-examination:

That most of the mines in the association are large mines and that the Reciprocal Organization includes a very large percentage of the coal producing business of Indiana, say approximately 75 or 80 per cent of the tonnage. That approximately 2,500 reports of injuries

were made by members of the organization through said organization for the year ending June 1st, 1919. Many of these accidents were in cases where the men were only off a day and many reported that they did not lose any time.

SAMUEL R. ARTMAN, recalled.—

Cross-examination.

That in the reports made to the Inspection Department of the Industrial Board for the year ending September 30th, 1918 there were included 114 fatalities in the coal mining business in Indiana; whereas in the report made to the Industrial Board only 70 fatalities are shown; that the evidence heretofore introduced in this case shows that in the report made to the Industrial Board of Indiana for the year ending September 30, 1918 the total injuries to persons engaged in the coal mining business numbered 2,162; whereas in the reports to the Mine Inspection Department the total number of employees injured is given as 1,591; that the figure of 2,162 for total injuries reported directly to the Industrial Board approximately and substantially includes the total figures of 1,591 reported to the Mine Inspection Department.

Witness testified that there were 10 per cent of the coal operators that came under the Compensation Law prior to 1919. That the compensation cases which he passed upon were restricted wholly to those injuries occurring at the mines of operators who came under the law; that the questions passed upon by witness as a member of the Board do not include any question of negligence. As to the other 90 per cent of the coal operators he had no occasion to hear any evidence with respect to injuries or what caused them. That witness gave no figures as to the percentage of injuries in the coal mining business which were caused by negligence, but that the figure given applied to all industries.

(NOTE.—That only 10 per cent of the accidents in Indiana in all businesses were the result of actionable negligence.)

That the Vandalia Coal Company for the year September 30th, 1917 to October 1st, 1918 did not report a single injury to the Industrial Board; that the Lower Vein Coal Company reported 12 to the Industrial Board and 6 to the Mine Inspector; Zeller McClellan Company reported 9 to the Industrial Board and none to the Inspector of Mines; J. Woolley Coal Company did not report any to either; Shirkey Coal Company reported 31 to the Industrial Board and 2 to the Inspector of Mines; Ayrshire Coal Company reported 78 to the Industrial Board and 2 to the Inspector of Mines; Coal Muff Mining Company reported 6 to the Industrial Board and 1 to the Inspector of Mines; Grant Coal Company, 6 to the Industrial Board, none to the Inspector of Mines; Jackson Hill Coal and Coke Company reported 162 to the Industrial Board and only 18 to the Inspector of Mines.

The following part of the record shows a statement made by Judge Artman, a member of the Industrial Board of Indiana, the motion of the plaintiff to strike out the statement and the ruling of the court thereon:

"I think the actual fact is that neither one of these reports or both of them combined is or are reliable. In other words, I don't think if you take the accidents reported in both of them in the aggregate for the year 1918, for the period September 30th, 1917 to October 1st, 1918, we have over sixty-six and two-thirds per cent of the injuries that actually occurred in the coal mines of Indiana. For instance, here is the J. Woolley Coal Company that do not report any to anybody. I think if you held an inquisition on that company you would find out facts that would justify the reports of a great many."

Mr. Thompson: "The plaintiffs move to strike out the statement that has just been made on the ground that these reports speak for themselves; that this is not predicated upon any knowledge or information shown to be possessed by the witness, and it is simply a guess or supposition on the part of the witness."

199 The Court: "Now, you take Judge Artman's voluntary statement. He asked the privilege of making the statement and said if the court thought it was not competent to strike it out. That is what he said, wasn't it?"

Mr. Thompson: "Yes sir."

The Court: "It is nothing but a mere guess. It is not an opinion based upon facts and it is contrary to other testimony here. I will not strike it out; I will just disregard it. The Court of Appeals, if this should go up, might think this was important. If I strike it out they won't have the benefit of it. Of course, the presumption is that the law is observed. The presumption is that the accidents are reported. It will take something more than a guess or an opinion to make a dent in that presumption, let alone overcoming it."

CLIFFORD HOFFMAN, recalled:

J. Woolley Coal Company is one of the subscribers to the Indiana Coal Operators' Reciprocal Organization. It reported to that organization 46 accidents occurring to its employees from the 1st of October, 1917, to the 1st of October, 1918.

200

*Complainant's Rebuttal.*

HOWE S. LANDERS, recalled:

Witness' attention is called to his evidence that the number of employees in the Iron and Steel Industry proper for the year ending September 30th, 1918, was 27,720 and the number of injuries to such employees, 3,446; that the number of the employees in the Iron and Steel and Allied Industries aggregated 59,516 and the number of injuries 6,096. The witness then further testified that the entire



system of tabulating the experience of the Industrial Board was originated by him, that he selected the industries under the classification of Iron and Steel which are in his opinion responsible for the 3,446 accidents shown in the annual report of the Industrial Board and collected under the head of Iron and Steel; that included in the Iron and Steel and Allied Industries are the employees of Forging Plants, Foundries, Castings and Saw Manufacturers, making an aggregate of 59,516 employees. That to determine the number of accidents to all these employees it is necessary to include the number of accidents not only to the employees in the Iron and Steel Industries proper, but in the Allied Industries; that the figure of 59,516 employees of the Iron and Steel and Allied Industries includes all employees of such industries and is responsible for the 6,096 injuries. That Mr. Yarling in making out his statement of 3,446 accidents to 60,574 employees of the Iron and Steel Industry included the employees of the entire Allied Iron and Steel Industries, but did not include the corresponding accidents, and therefore his percentage of injuries is cut down from  $10\frac{1}{4}$  per cent to 5.

Cross-examination:

That in compiling the data about which the witness has testified he selected the industries that he knew would be included in the group which is called hazardous.

CAIRY LITTLEJOHN, recalled.

Cross-examination:

Witness' attention is called to the Year Book of Indiana for 1917 containing the report of the Department of Mines and Mining, showing 61 fatal accidents to persons employed in mines and 5 fatal accidents employed on the surface, showing an average number of 23,940 persons employed about mines, which shows an average of 2.75 killed per thousand employees; further showing that in 1917 there were 24,000,000 tons of coal produced in Indiana; that in 1918 there were 28,000,000 tons of coal produced, with fatalities of 114 and with 27,932 employees; in other words, that there was a larger percentage of fatalities in the coal mining business in 1918 than in 1917 or preceding years. Witness testifies that this was an unusual condition in Indiana and that the unusual fatalities in 1918 were due to three elements which contributed something to the increased number of accidents: first, the miners were working to the highest tension of their physical ability; every day that the mines could possibly be run, they were working; second, supplies and materials for mines were not as readily obtainable on account of war conditions; third, a great many young men having gone into the military service the requirements of the situation took to the mines quite a few inexperienced men and older men.

Witness' attention was called to two fatal accidents included in the total of 114 for the year ending September 30th, 1918, and upon

an examination of the records stated that one was stricken by heart failure and the other by apoplexy; that these two should be deducted from the total of 114 fatalities in the coal mining business for that year, leaving a net result of 112.

203 HENRY MOORE, recalled

Direct examination:

That the Vandalia Coal Company is not an operating company. Its mines are operated by the Vigo Coal Products Company. That in the coal mining business in Indiana during the period about which evidence has been given coal mining companies employed clerical employees and some top men at each mine. These men are engaged above the ground in hauling, carpenter work, blacksmithing, etc.; that the clerical employees consist of bookkeepers, paymasters and watchmen; that these employees are all included as employees of the mine in the reports to the Industrial Board.

Cross-examination:

Vandalia Coal Company does not operate any mine. This is done by the Vigo Coal Products Company. Vandalia Coal Company owns seven or eight mines which were being operated. The employees are paid by the Vigo Coal Products Company. These corporations are absolutely distinct and do not have the same stockholders nor the same officers.

CLIFFORD HOFFMAN, recalled:

Lower Vein Coal Company is a subscriber and a member of the Indiana Coal Operators' Reciprocal Organization. From the  
204 1st of October, 1917, to the 1st of October, 1918, it reported 135 accidents to that organization, which included many men whose injuries incapacitated them for only a day, or possibly not at all.

SYDNEY S. MILLER testified:

That he made an examination of the individual reports of accidents made to the Industrial Board of Indiana by certain employers for the year ending September 30th, 1918, and from such reports compiled certain of the more serious injuries.

The following list shows the name of the employer, the business in which engaged, the name of injured employee, the character of the injury and in certain instances the length of the disability or compensation granted, resulting from such injury.

(NOTE.—We have not copied into the record a complete list of the injured employees as it was introduced before the court, but have selected only the more serious ones.)

205 Inland Steel Company, Manufacturers of Steel.

Name of employee.	Character of injury, extent of disability, or compensation granted.
McPherson .....	Left foot and leg crushed; foot nearly severed.
Maley .....	Burn of right finger and hand.
Divyac .....	Crushing injury to pelvis, with abdominal injuries.
Podner .....	2nd degree burn of right fore-arm, elbow and wrist.
Jowers .....	Contusion and bruise of left wrist.
E. B. Padonel .....	Compound fracture of tibia of left leg.
Szabo .....	Sustained braise of left arm and nose.
Kurerovoc .....	Contusion of left lumbar region.
Wanicky .....	Contusion of left pelvis and right dorsal region; possible internal injury.
Lursa .....	Contusion and bruise of lower part of back and gluteal muscles.
Patoinaum .....	Second degree burn over entire face and left ear and left hand.
Wirts .....	Entire surface of face burned.
Fulea .....	Severe sprain of left ankle; probable fracture of hip of lower fibia.
206 Reznyoy .....	Fracture of right fore-arm.
Hansen .....	Contusion and bruise to the back.
Shankes .....	Sprain and probable fracture of right fore-arm.
Saffra .....	Amputation of distal phalanx of middle finger of left hand.
Brown .....	Scalp cut about six inches long; leaving skull bare; neck and back injured; 28 days.
Henolrk .....	Fracture of left tibia; injuries to back.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Christea .....	First and 2nd degree burns of right arm, lumbar region and left shoulder.
Hunes .....	Severe sprain of right ankle.
Paske .....	Crushing injury of right hand.
Grezech .....	3rd degree burn of entire face.
Shivers .....	Burned to death.
Christea .....	Laceration and destruction of tissues of right thumb.
Bourke .....	Fracture of left leg above knee.
Lakatos .....	Second degree burn on right ear.
John .....	Second degree burn on right foot.
Vlasech .....	Laceration of forehead.
Pukewyez .....	Cut four inches long on right cheek; fracture of right humerous.
207 Hant .....	Severe contusion of left side of head; sprain of back.
Cowherd .....	Electrical burn over entire face and right in-ex finger.
Davis .....	Two small burns on cornea of right eye.
Lides .....	Fracture of tibia, and fibula, lower 1/3 right leg.
Golubisty .....	2nd degree burn on forehead; neck and left shoulder; both eyes and eyelids burned.
Wierngash .....	Multiple fractures of the bones of the fingers and metacarpal bones of right hand.
Kergizan .....	Hit by train; killed instantly.
Micich .....	1st and 2nd degree burns of entire left hand and wrist.
Polomerione .....	Contusion of back and fracture of fibula.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Slaski .....	Hot bar entered lower abdomen, running through abdomen and exit at back; fatal.
Sproniez .....	Contusion and bruise of lower part of chest; probable fracture of two or three ribs; 4-1/7 weeks.
Bradley .....	Loss of eye.
Speros .....	Contusion of right ankle and thigh; laceration of shin; three teeth knocked loose; 3-4/7 weeks.
208 Vinchich .....	2nd degree burn back of right hip; 4-6/7 weeks.
Walker .....	Severe infection in left hand; 2-4/7 weeks.
Potokanz .....	Second degree burn of face, neck, back, arms, wrists, legs, in hamstring region, and buttocks; 5-6/7 weeks.
Capotan .....	2nd degree burn around right ankle and instep; 3-3/7 weeks.
Pontoch .....	1st and 2nd degree burns on chest, back, buttocks, both eyes, both arms, and scrotum; 6 weeks.
Lund .....	First degree burn of right foot in two small places; 3-5/7 weeks.
Tylk .....	Distal phalanx of 1st, 2nd and 4th finger torn off on saw; 45 weeks.
Papaz .....	Laceration of skin over right eye and skull fractured; 2-1/7 weeks.
Noochita .....	Bad sprain of wrist and probable fracture; 2-3/7 weeks.
Sekularae .....	Second degree burn of calf of left leg; 3-2/7 weeks.
Szavity .....	1st and 2nd degree burns on right side of face and neck.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Bizineski .....	Deep laceration of whole of left hand; with probable amputation; 150 weeks.
Ciacoe .....	2nd degree burn on right ankle; 3-3/7 weeks.
209 Kryogwoski .....	Contusion and bruise of right ankle; 2-4/7 weeks.
Piazecki .....	Second degree burn on all toes of right foot; 13-5/7 weeks.
Hatiagan .....	Deep cut on right leg; 2-2/7 weeks.
Ungurean .....	Second degree burn below right knee; 2-5/7 weeks.
Gustatski .....	Severe sprain of back; 3-5/7 weeks.
Sorelas .....	Second degree burn on left foot; first degree burn on side of neck; 3-2/7 weeks.
Carlson .....	Contusion, with compound fracture of right hand and wrist; 25 1/2 weeks.
Tatojan .....	Deep cut on back of head with possible fracture; 30-4/7 weeks.
Boshnoski .....	Contusion of right foot; 5-1/7 weeks.
Harris .....	Contusion and fracture of right foot; 10-6/7 weeks.
Luebke .....	Amputation of left little finger below second joint; 30 weeks.
Brown .....	Complete severance of whole index finger on right hand; 30 weeks.
Balich .....	Compound fracture of second and 3rd last toes on left foot; 41 weeks.
Cernall .....	1st and 2nd degree burns of right and left legs below knees; 3-2/7 weeks.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Stanley .....	Compound comminuted fracture of the toes of left foot; 60 weeks.
210 Farkas .....	First, second, third and fourth fingers; 48 weeks.
Seemp .....	Burn and infection to left foot; 2 1/7 weeks.
Exidis .....	Contusion of left leg; 4 weeks.
Susnaro .....	Sprain of back in lumbar region; 3 4/7 weeks.
Dokter .....	Severe contusion to upper lip; some teeth loose and one inch split of tongue; 5 weeks.
Busa .....	Severe contusion and abrasion of all toes of right foot; 31 weeks.
Howard .....	Compound fracture and dislocation of left elbow joint; fractured ribs and fracture of skull; 50 weeks.
Goluoich .....	Sustained burns to face, chest, back of left arm; 3 5/7 weeks.
Radilis .....	Burn on back and neck; 2 3/7 weeks.
Contreras .....	2nd and 3rd degree burns over entire face; 2 6/7 weeks.
Cobanne .....	Cole's fracture of right fore-arm; 49 weeks.
Pdzwite .....	Loss of entire index finger of left hand; 49 weeks.
Dott .....	Fracture of base of skull; 10 weeks.
Worthington .....	First degree burn of heel on left foot, which became infected; 4 3/7 weeks.
211 Garcia .....	Severe contusion with compound fracture of tibia of left leg; 13 weeks.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Hentesin .....	Crushing injury to second, third and fourth fingers of left hand; 30 weeks.
Sepiol .....	Laceration three inches long over left frontal bone; 9 weeks.
Washington .....	Fractured right fore-arm; 2 6/7 weeks.
Sarban .....	Amputation of right foot and half metatarsal of left great toe; 155 weeks.
Howell .....	Severe contusion of right arm with fracture of radius; 2 6/7 weeks.
Boleshki .....	Severe contusion and abrasion of entire right leg; 2 4/7 weeks.
George .....	Sprain of back; 2 1/7 weeks.
Balick .....	Fracture of rib on right side; 3 3/7 weeks.
Swentonivich .....	Severe contusion of left leg; 3 6/7 weeks.
Aldea .....	Fracture of ulna and radius of left arm; 6 4/7 weeks.
Szentz .....	Severe contusion and abrasion of legs, which became infected; 2 5/7 weeks.
Hetzag .....	1st and 2nd degree burns of back, arms and legs; 3 4/7 weeks.
212 Jadrank .....	Fracture of right leg; 8 1/7 weeks.
Smith .....	Second degree burns scattered all over body; scalp wound on left side of head; 3 weeks.
Nelson .....	Fracture of left wrist and probable internal injuries; 6 3/7 weeks.
Adams .....	Left hand crushed, necessitating amputation of hand.
Banek .....	Fracture of skull; nose and left arm; severe laceration of forehead and right ear; 37 6/7 weeks.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Bobur .....	Second degree burn of neck, face and both fore-arms; 4 $\frac{6}{7}$ weeks.
Glappin .....	1st and 2nd degree burns to entire face, neck; 1st degree burns to both wrists and shoulders; 4 $\frac{4}{7}$ weeks.
Thomas .....	Burns of the conjunctiva of eye and 1st degree burns of face and forehead; 2 $\frac{2}{7}$ weeks.
LaMon .....	Second degree burns around both eyes and 1st degree burns of neck, face and nose; 24 weeks.
Vuckovich .....	Severe contusion of right leg; 7 $\frac{3}{7}$ weeks.
Asalos .....	Fracture of foot; 19 weeks.
Shultz .....	Skull fractured; fatal.
Morasko .....	1st and 2nd degree burns of arms and outer surface of left leg; 5 weeks.
213 Evasu .....	Loss of great toe on left foot; 30 weeks.
Karahaulios .....	Crushing injury to right hand, necessitating amputation of third, fourth and fifth fingers; 94 $\frac{5}{7}$ weeks.
Malbasa .....	1st degree and 2nd degree burns of entire face; 3 $\frac{3}{7}$ weeks.
Maurich .....	1st, 2nd and 3rd degree burns on head above ear and neck and shoulder back, arms and legs and feet; 4 $\frac{3}{7}$ weeks.
Rheinberger .....	Amputation of little finger on right hand; 30 weeks.
Sauerman .....	Electric flash in both eyes.
Shaffe .....	Electric flash in both eyes.
Lorwich .....	2nd degree burn on right foot, at base of toes.
Doggett .....	Piece of steel in left eye.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Frank .....	Laceration of skin, inner and outer canthi of left eye.
Nihok .....	Sprain of right knee.
Comsa .....	Contusion and fracture of pelvis and internal injuries; fatal.
Sarus .....	First and second degree burn- on both cheeks and chin.
Rees .....	Left side of neck and face bruised; contusion of left arm and back.
Wurgo .....	1st degree burn,
Raisich .....	1st and 2nd degree burns on left hand.
214 Berry .....	1st degree burn on face, neck and ear.
Flieger .....	Contusion and bruise to lower part of chest and abdomen.
Ladere .....	1st and 2nd degree burn of right leg.
Dogintos .....	Contusion and abrasion of left leg and thigh; slight bruise on back.
Welsh .....	Contusion and laceration of left hand.
Jurgi .....	Laceration of cornea, with internal corneal hemorrhage.
Fosta .....	2nd degree burn intercanthia left the whole face.
Stamp .....	2nd degree burn on fore-arm of left arm.
Fortu .....	2nd degree burn intercanthia left eye.
Kartz .....	Abrasion and contusion right leg; possibly depressed fracture of right tibia.
Divjak .....	2nd degree burn on right hand and wrist.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Vrhavac .....	Squeezed between ladies; fatal.
Stinko .....	First degree burn of surface of all fingers.
Vendovsky .....	Hand bruised; probable fracture of thumb of left hand.
Hrieko .....	Contusion of left side of face and back of head.
215 Mullas .....	Acid burn of both wrists.
Boern .....	Multiple compound fracture of left foot, with probably amputation; fatal.
Griffith .....	Electric flash in eyes.
Vinereon .....	2nd degree burn on left leg and foot.
Winter .....	2nd degree burn on right side of back.
Dugger .....	Fracture of ribs on left side.
Gurney .....	2nd degree burn of calf of left leg.
Ragi .....	Skull fractured; fatal.
Medovich .....	2nd degree burn on back of left foot and first degree burn of left wrist
Gulick .....	Cuts around outside of eye and injury to cornea.
Rindokas .....	Severe laceration of chin.
Urnia .....	Contusion of abdomen.
German .....	Compound comminuted fracture of right foot; multiple fracture of left foot; fatal.
Check .....	2nd degree burn on back of neck and back.
Castro .....	2nd degree burn on back of neck and both wrists.
216 Pelic .....	Contusion of outer side and lower half of left leg.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Sirlin .....	Incomplete fracture of 19th rib.
George .....	Severe contusion of instep of right foot.
Varcas .....	Glass in cornea of eye.
Perry .....	2nd degree burn over posterior surface of entire fore-arm; also thumb and middle finger on right hand.
Lee .....	First degree burn to entire surface of both feet.
Robinson .....	2nd degree burn near posterior border of left fore-arm.
Luknie .....	Severe strain of back.
Natek .....	Contusion of entire surface of left leg and foot.
Corriana .....	Sprain of left side and back.
Cyllin .....	Corneal ulcer.
Bikis .....	First and 2nd degree burns on right scapular region; also on right arm.
Petrosoff ..	First degree burn to inner margin of upper and lower eyelids of left eye.
Fuhrmark .....	Contusion to muscles of back and abdomen.
Conleson .....	Laceration and contusion on top of head.
217 Grover .....	Severe contusion over abdomen.
Smith .....	Corneal ulcer of left eye.
Martan .....	Contusion of right hypo-condriac region; incomplete fracture of one rib.
Magda .....	Deep laceration 1½ inches long left supra parietal region.
Kruelaksis .....	Incomplete fracture of left 5th rib.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Young .....	Sprained back.
Andro .....	Fracture of 4th dorsal vertebrae, partial severance of spinal cord; fracture of skull.
Morningstar .....	2nd degree burn of entire face.
Ayala .....	Infection of right leg in sores.
Touchevik .....	2nd degree burn on left elbow; first degree burn over entire left side.
Pryacha .....	First degree burn of right side of chest.
Braz .....	Laceration 2 inches long on left frontal region.
Crigar .....	Contusion to right infra-scapular region.
Pakovich .....	2nd degree burn on left fore-arm.
Felire .....	Injury to head and back. Incomplete fracture of skull.
Brucks .....	Sprain of back, lumbar region.
218 Randal .....	Severe contusion with fracture of right knee.
Bills .....	Puncture wound with first degree burn to outer side of left leg.
Karshales .....	Overcome by gas.
Sankach .....	Severe contusion of left elbow joint.
Charla .....	Severe laceration to top of head.
Myers .....	2nd degree burn to right arm.
Billaponda .....	Sprain of muscles in back.
Feczla .....	Severe sprain to muscles of back.
Darlan .....	First degree burn of heel and ankle of left foot.
Samuels .....	Contusion to head.
Costonon .....	Sprain of muscles of back, scapular region.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Novat .....	Severe contusion to abdomen.
Gurka .....	First degree burn across right shoulder.
Barunica .....	Injury to right eye ball; 8-3/7 weeks.
Seinks .....	2nd degree burn to top of right hand.
Hudish .....	Puncture wound in center of left cheek.
Sherwood .....	Laceration to top of head.
219 Kolcha .....	Loss of right foot.
Gamish .....	Fracture of left wrist.
Burchich .....	First degree burns to entire face.
Balla .....	First and 2nd degree burns to right wrist.
Pelcar .....	Piece of emory bedded in left eye.
Talliner .....	First degree burn to entire face and flash to both eyes.
Mongommus .....	Rupture of left eye ball.
Vessel .....	Found dead at soaking pits.
Moldovan .....	Sustained burns and injuries from which he died.
Sheffield .....	Laceration 1 1/2 inches long on top of head; 42-5/7 weeks.
Pepich .....	Severe contusion to right side of back.

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Name of employee.	Character of injury, extent of disability, or compensation granted.
220 Kreacakin .....	Squeeze of left hand, with deep ragged laceration 1 inch long on the palm of proximal phalanx of index and middle fingers respectively; abrasion 1/2 inch in diameter on dorsal surface of proximal phalanges of index and middle fingers. 20 days off.

Character of injury, extent of disability, or compensation granted.

Name of employee.

Kodasher .....	Second degree burn, extensor surface of left fore-arm, lower third of left arm, and also all surfaces of the left hand. All surface of right hand and flexor surface of lower third of the right fore-arm; widely scattered area, $\frac{1}{2}$ inch in diameter over anterior surface of chest and abdomen; 2 inches in diameter on anterior surface of right knee; entire face, neck and ears; upper half dorsal region of back; an area 2 inches in diameter left lumbar region; entire scalp, except two areas, 2 inches and 1 inch in diameter, respectively in the left parietal region; 44-1/7 weeks.
Maros .....	Squeeze on the lower two-thirds of right leg, with an abrasion 2 by 1 inches on the external surface and 1 inch in diameter on the internal surface; 14 days.
Peturis .....	Chip of metal embedded in the lower central portion of left cornea, with resulting deep abrasions $\frac{1}{32}$ of an inch in diameter; 12 days.
221 Klinski .....	Contusion of dorsal surface of right foot, with simple fracture of distal portion of first metatarsal bone; 28 days.
Stirca .....	Simple fracture of both bones of right leg, in the middle 3rd, with an abrasion two inches in diameter on the anterior surface of middle 3rd; 223 days.
Stasa .....	Second degree burn of right side of neck; scattered areas of second degree burn over the cutaneous surfaces of both eyelids of both eyes and the adjacent skin; first degree burn of the remainder of face; 31 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Croutty .....	Loss of soft tissue of right with the end of the os calcis exposed; 309 days.
Kavahevich .....	Severe squeezing injury of right foot and ankle, with fracture of the astragalus; 41 days.
McNamara .....	Contusion of 1st, 2nd and 3rd toes of right foot; loss of 3rd toe through distal phalanx; 45 weeks.
Fluecos .....	Second degree burn on legs, thighs, face and first degree burn on neck; 63 days.
McDonald .....	Squeeze of right hand with simple comminuted fracture of the metacarpal upper bone, which corresponds to the middle finger; 30 days.
Hecht .....	Crushing injury of left fore-arm in its lower $\frac{1}{4}$ , with compound comminuted fracture of both the ilia and radius, with a loss of a section of the radius, about $\frac{1}{2}$ inch long; 3 months, 5 days.
222 Markovich .....	Amputation of middle and ring fingers near proximal end of middle phalanges; 45 weeks.
Alle .....	Sprain of right wrist; 51 days.
Koffas .....	Crushing injury of right fore-arm with fracture of both bones and fracture of three bones in right hand; 384 days.
Souber .....	Scattered areas of 2nd degree burn over surface of left leg; also external surfaces of left thigh and the left side of abdomen; 62 days.
Ghopy .....	Amputation of right ring finger through extreme distal portion of middle phalanx; deep cut on middle finger; 22-4/7 weeks
Pusim .....	Fracture of both bones of left fore-arm; 96 days.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Sabotieh .....	Fracture of left thigh bone and dislocation of knee; 399 days.
Micholowski .....	Compound, comminuted fracture of both bones of left leg, lower 1/3; 294 days.
Kilimas .....	Widely scattered areas of 2nd degree burn varying from 1/2 inch to 2 inches in diameter, over back, with several areas 1/2 inch in diameter on the posterior domes, and several areas 1/2 inch in diameter on surface of ab-surface of left arm, and an area 1/2 inch in diameter on radial border of middle phalanx of left middle finger; first and second degree burns of occipital region of the scalp; 23 days.
223 Tromp .....	Crushing injury of right hand and lower 3rd of fore-arm, severing the fore-arm in its lower 3rd, except small strands of soft tissue.
Skender .....	Second degree burn, 4 inches by 3 inches on the posterior lateral surfaces of the left foot over the tendon Achilles; 65 days.
Thomas .....	Simple fracture of the left tibia about 5 inches below knee joint; simple comminuted fracture of the upper extremity of the left tibia into the knee joint; 112 days.
Dennis .....	Right thumb severed through the middle of the proximal phalanx; 60 weeks.
Hnez .....	Right thumb severed thro the proximal portion of the proximal phalanx, and the soft tissues are removed from the distal portion of the corresponding metacarpal bones; 60 weeks.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Rock .....	Squeeze of right foot and ankle with simple dislocation of proximal end of metatarsal bone, which corresponds to great toe; simple fracture of proximal ends of second and third metatarsals, and incomplete fracture of shaft of second metatarsal; 41 days.
Mrksaic .....	Second degree burn of entire face; 33 days.
Takash .....	Burn of face and ears; ophthalmia electrica of eyes; 14 days.
224 Bringman .....	Compound fracture of right femur and lower third, with a deep laceration $1\frac{1}{2}$ inches long on internal surface; 139 days.
Feretus .....	Amputation of about $\frac{1}{2}$ inch of bone of distal phalanx of thumb of left hand; 15 weeks.
Hebron .....	Second degree burn of dorsal surface of both hands and all surfaces of both fore-arms, and second degree burn of face; 24 days.
Cindrick .....	Simple comminuted fracture of the right radius at the junction of the middle and lower thirds, simple fracture of the ulna at the junction of the middle and lower thirds, with simple fracture of styloid process of ulna; 62 days.
Davis .....	Second degree burn about body; 76 days.
Romanchenko .....	Second degree burn about body; 90 days.
Pryascak .....	Simple impacted fracture of the upper portion of the left femur; 87 days.

Name of employee.

Character of injury, extent of disability, or compensation granted.

Hennessy .....	Squeeze of the chest, with fracture of the fourth and fifth ribs in auxiliary line, and marked surgical emphysema over the entire right side of chest; squeeze of left arm, with abrasion on entire external surface; 37 days.
Urška .....	Squeeze of the lower portion of the left side of the abdomen; 25 days.
225 Zallin .....	Second degree burn of face, ears and lower portion of occipital region of scalp, neck, right knee, upper third right leg, left knee, and dorsal surface both feet, right fingers and right wrist; 130 weeks.
Wilhelm .....	Third degree burn foot and ankle, left; 72 2/7 weeks.
Staniories .....	Deep-seated particle in middle of right cornea, with resulting abrasion; 50 weeks.
Radack .....	Amputation of the distal phalanx of the middle finger through its proximal portion; 30 weeks.
Kellog .....	Amputation of the left middle and ring fingers thro the distal portion of the middle phalanges; 60 weeks.
Grabus .....	Second degree and third degree burn on the mucous surface of right lower eyelid; 13 days.
Pastoviz .....	The right index, middle and little fingers are severed through the proximal portions of the middle phalanges, and the ring finger through the distal portion of proximal phalanx; left index, middle and ring fingers severed through the proximal portions of the middle phalanges; 120 weeks.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Chamorro .....	Deep irregularly transverse laceration across popliteal space of right leg, severing internal hamstring muscles, and lacerating but not severing external hamstring muscles, and widely exposing popliteal nerves; 130 days.
226      Raphus .....	Squeezing injury of the right foot with a deep laceration 3 inches long along its inner border, with a deep laceration extending transversely across the foot from the base of the little toe to the ball of the foot over the distal portion of the second metatarsal bone; compound fracture of the distal portion of the fourth and fifth metatarsal bones; 150 days.
Vemak .....	Squeeze of the right foot, with a band of second degree burns $\frac{1}{2}$ inch wide across the dorsal surface of the foot and over the middle of the shafts of the metatarsal bones; 65 days.
Pesut .....	Squeeze of the right foot, and the lower third of the right leg; 51 days.
Kuhule .....	Third degree burn of the left cornea; there will be serious impairment, and probably total loss of the vision of right eye; 100 weeks.
Konovis .....	Squeezing injury of left foot, with deep laceration 6 inches long on the inner side of foot, and compound dislocation of both ends of proximal phalangeal bone of great toe; 45 weeks.
Drayton .....	Severe squeeze of left foot, with fracture of cuboid bone; 89 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Kuchl .....	Squeeze of both legs, with simple comminuted fracture of the right tibia, and a simple fracture of both bones of left leg in upper third; 86 days.
Kalisevski .....	Crushing injury of the pelvis, and compound fracture of right femur; 91 days.
Isck .....	Second degree burn of cutaneous surface right eyelid. Third degree burn outer half of mucous surface of lower lid; the other half of cornea is burned, and the outer lower of the cornea is curetted off; 39 days.
227 Gonigan.....	Simple comminuted fracture of the right radius at the junction of the lower and middle thirds; simple dislocation flexor surface of wrist at lower end of the right ulna; 34 days.
Ross .....	Crushing injury with amputation of distal phalanx of right index finger thro its proximal portion; 15 weeks.
Cichon .....	Puncture wound of right eyeball; 100 weeks.
Murray .....	Second degree burn of surfaces of both feet, except the plantar surfaces of the lower half of legs; all surfaces both hands and both fore arms, and an area four inches in diameter in left gluteal region; 135 weeks.
Sargent .....	Contusion, with deep ragged laceration 2½ inches long on the vertex of scalp; 45 days.
Ofrionink .....	Fracture of the right femur; 108 days.
Wilson .....	Ulcer 1/16 inches in diameter in upper central portion of the right cornea; loss of eye; 100 weeks.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Roberts . . . . .	Crushing injury of right hand, with numerous cuts and abrasions and fractures; 120 weeks.
Lucas . . . . .	Scattered areas of second degree burn on extensor surface of left leg; second degree burn $\frac{1}{2}$ inch in diameter on extensor surface of the left ankle; scattered area $\frac{1}{8}$ inch in diameter on dorsal surface of both feet; 53 days.
228 Mihall . . . . .	Second and third degree burn over nearly all of back and on palm of hand, right; 33 days.
Kadlee . . . . .	Complete transverse fracture of the right radius; 24 days.
Wilson . . . . .	Second and third degree burn over area 4 x 6 inches on sole of left foot; 78 days.
Yonsich . . . . .	Second degree hot water burn on external and posterior surface of the lower two-thirds of right thigh; second degree hot water burn of entire right leg; same 8 x 3 inches on anterior surface of the left side of the chest and abdomen; same on the circumference of the right wrist; same on flexor surface of lower third of left forearm; 44 days.
Gayer . . . . .	Second degree burn one inch in diameter on upper portion of the anterior surface of chest in the medial line; several areas of second degree burn each $\frac{1}{2}$ inch in diameter in left lumbar region and above left hip; two areas of second degree burn each $\frac{1}{2}$ inch in diameter on the dorsal surface of the left wrist; laceration $\frac{1}{2}$ inch long on right

Name of employee.	Character of injury, extent of disability, or compensation granted.
	cheek; scattered areas of second degree burns each $\frac{1}{2}$ inch in diameter on dorsal surface of right fore-arm; 21 days.
Michael .....	2nd degree burn of right dorsal surface of right hand; first degree burn of face and all surfaces of the left fore-arm; 2nd degree burn 4 x 3 inches on the posterior surface of right heel; 2nd degree burn 2 inches in diameter in left lumbar region of back; 55 days.
220 Koss .....	Crushing injury of left leg at lower third, severing leg except for some shreds of soft tissues; squeeze of right great, second and third toes, with loss of nails and all of the epidermis of the distal phalanges; 125 weeks.
Laderer .....	Contusion of anterior surface of lower two-thirds of left leg, with laceration $\frac{1}{2}$ inch long on anterior surface, and compound fracture of tibia at junction of the lower and middle one-third; 69 days.
Kotlarik .....	2nd degree burn on right dorsal region of the back and the extensor surface of the right arm and extensor surface of fore-arm; 19 days.
Watkins .....	Conjunctivitis of the right eye; 18 days.
Redman .....	Squeezing injury of chest; abrasion 2 inches in diameter, laceration 1 inch long on left elbow; 45 days.
Nicholas .....	Bruise of left side of face, with fracture of lower jaw; 32 days.
Newman .....	Squeeze of left thigh, with deep laceration 14 inches long transversely across posterior surface of upper third; deep laceration 3 inches long in per-oneum; 54 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Hancock .....	Contusion of the anterior surfaces of the middle thirds of both legs; laceration 1 inch long on the external surface of lower third of right leg.
230 Sullivan .....	Eptholmea electrica both eyes; first degree burn of the face.
Paganox .....	Adherent particle in the outer central portion left cornea.
Monager .....	Severe contusion of the dorsal surface of the left foot, with fracture of the shaft of middle metatarsal bone.
Lodo .....	Epthelmea electrica of both eyes.
Gdlhor .....	2nd and 3rd degree burn entire body; fatal.
Angeloff .....	Squeeze of right thigh, with compound fracture of femur.
Konstarich .....	Crushing injury of left foot, with compound comminuted fracture of metatarsal bones, with deep laceration 1½ inches long on external portion of dorsal surface; two lacerations each 1 inch long on dorsal surface over first and middle metatarsal bones.
Veech .....	Third degree burn right occipital region; 2nd degree burn right ear; 2nd degree burn left ear; 3rd degree burn right hand and wrist.
Lobash .....	Squeeze of the abdomen.
Novasel .....	Crushing injury and burns on both legs; fatal.
Nikolich .....	Puncture wound anterior surface right knee.
Wood .....	Left ankle broken.
231 Carey .....	Overcome by gas; ½ inch laceration in left occipital region; abrasion on point of chin; conjunctivitis in both eyes; first degree burn of entire face.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Dogdanovich .....	Squeeze of the pelvis; simple fracture of the descending and horizontal and cubic ramus; complete rupture of the urethra.
Svetitz .....	Contusion with abrasions of both hips, knees and the sacral region.
Kania .....	Contusion with abrasion in the left iliac and lumbar regions.
Horwitz .....	Severe conjunctivitis of both eyes, with particles of naphthalene adherent to the bulbular conjunctiva and mucous surface of both lids of both eyes.
Johnson .....	Contusion right side of chest; 2nd degree burn on right cheek.
Gustafson .....	Crushing injury of scalp; fatal.
Ketunich .....	Squeeze of the chest with deep abrasions over the entire back.
Cwiklinski .....	Deep, irregular shaped laceration, 6 inches long in the left frontal and temporal regions of the scalp; the skull is widely exposed.
Baltrusic .....	3rd degree burn of face, neck, entire trunk, all surfaces of both fore-arms and hands, and scattered areas of 2nd degree burn over thighs, legs and feet; fatal.
232 Fusko .....	Squeeze of right leg.
Rodmanovich .....	Epthelmia electrica of both eyes.
Stancher .....	2nd degree burn in inner canthus of right eye.
Safford .....	Foreign body with 2nd degree burn in middle of the lower portion of the right eye; $\frac{1}{8}$ inch burn in lower central portion of cornea.
Shlovak .....	Squeeze of the pelvis and the left shoulder, with an abrasion 6x4 inches on posterior surface.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Yuma .....	2nd degree burn flexor surface of lower third left fore-arm.
Jordar .....	Burn of entire left cornea.
Buly .....	Fracture of lower end of right radius.
Ballard .....	2nd degree burn $\frac{3}{4}$ inch in diameter on dorsal surface of left foot over the 2nd and 3rd metatarsal bones.
Suslawich .....	Contusion of left side of chest with simple fracture of the tenth rib.
McKerlie .....	Squeeze of the pelvis; abrasion 8 by 2 inches in the sacral region; abrasion 1 inch in diameter over the right anterior superior iliac spine.
Figliulo .....	Foreign body in eye; deeply seated in center of right cornea.
233 Kochiva .....	Abrasion of nose and contusion of thigh.
Fabic .....	2nd degree burn of entire face with numerous particles of dirt embedded in the soft tissues.
Fluksa .....	Laceration of scalp.
Chogali .....	Amputation of right leg at upper third, and laceration of left thigh.
Volinsky .....	Abrasion $1/16$ inch in diameter in center of left cornea; numerous loose particles of glass floating on left eyeball; subconjunctiva hemorrhage about cornea.
Romanchanka .....	Crushing injury of the right arm, with a compound fracture of the humerus at the middle third, with no circulation in the fore-arm.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Mursel .....	Scattered areas of 2nd degree burns $\frac{1}{2}$ inch in diameter on all surfaces of left fore-arm and in right scapular region; 2 areas of 2nd degree burns 1 inch in diameter in lumbar region of back.
Alonin .....	Scattered areas of 2nd degree burns $\frac{1}{2}$ inch in diameter on upper lip and on flexor surface of middle third of right fore-arm; 2nd degree burn $\frac{1}{2}$ inch in diameter on right lower quadrant of abdomen; 1st and 2nd degree burn on left side of neck and on posterior surface of neck; laceration $\frac{1}{2}$ inch long on posterior surface of left elbow.
234 Weens .....	Traumatic orchitis in right testicle.
Duenan .....	Squeeze of pelvis with abrasion 6 by 3 inches over right hip; abrasion 4 inches in diameter in left gluteal region.
Yas .....	Crushing injury to left hand, necessitating amputation of the thumb, index finger and part of little finger.
Evanich .....	Burn of entire left cornea except upper central portion. The burn involves outer layers of cornea only; linear cut $\frac{1}{8}$ inch long transversely across upper central portion of cornea, which does not penetrate anterior chamber, the margins of which are deeply burned.
Restoff .....	Simple fracture of lower extremity of right radius and styloid process of the ulna.
Elliott .....	2nd degree burn 3 by 1 inch on left ankle.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Mastronikalos .....	Crushing injury of the abdomen and pelvis, with compound fracture of pelvis and extensive laceration of soft tissues; fatal.
Lostich .....	2nd and 3rd degree burn of the entire body except the feet and lower half of the right leg; fatal.
McCool .....	2nd degree burn on both forearms; 1st degree burn on left side of face.
235 Juzke .....	Numerous adherents particles with resulting abrasion in cornea of each eye; 1st degree burn on face; 2nd degree burn on anterior wall of right external auditory canal.
Dobisk .....	Squeeze of 4th and 5th toes, with ragged laceration $\frac{1}{2}$ inch long on the plantar surface of proximal phalanx of the 4th toe and a simple fracture of the distal phalanx of the 5th toe.
Povich .....	Deep laceration $1\frac{1}{2}$ inches long over left side of nose; also cut 1 inch long over bridge of nose; fracture of right shoulder blade and rib.
Seltin .....	Epthelmia electrica of both eyes.
Lara .....	Contusion of upper and middle third of right thigh.
Smith .....	Squeezed between column and end of crane; fatal.
Sulkowski .....	Fracture of skull; fatal.
Hatzyk .....	Deep 2 inch cut across dorsal surface of right hand from metacarpal bones that correspond to to the middle and ring fingers; extensor tendons of these fingers are exposed.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Riemenschneider .....	2nd and 3rd degree electric burns about body; fatal.
Chitwood .....	Hit on head by brick; fatal.
Pettigrew .....	Electric shock and burn; fatal.
236 Stamich .....	2nd degree burn of entire back from top of head to heels; 3rd degree burn of both hands above fore-arms, lower half of both arms and face; fatal.
Peres .....	Caught between ore unloader bucket and — while working in hatch; fatal.
Krajack .....	Contusion with 2 inch laceration in upper portion of occipital region with compound comminuted depression fracture of skull in that locality including circular area 1 inch in diameter.
Kibart .....	2nd and 3rd degree burn of face and scalp, and all surfaces of both hands, entire back, the extensor surface of both arms and fore-arms, the right gluteal region; scattered small areas about left ankle; 3rd degree burn 6x3 inches and posterior and lateral surfaces of right ankle.
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Husty .....	Hit in left groin with sledge.
Brown .....	2nd degree burn on right side of face, and 2nd degree burn on flexor surface of right wrist.
Anderson .....	3rd degree burn $\frac{1}{4}$ by $\frac{1}{4}$ inch, upper and lower eye lid.
Konopka .....	Severe contusion of third toe.
Peterson .....	Contusion of dorsal surface of left foot, over 4th and 5th metatarsals; severe sprain of ankle; possible fracture.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Morchuk .....	Contusion and multiple abrasion on anterior surface of right leg, between ankle and knee.
Gilman .....	2nd degree burn on dorsal surface of left middle and index finger, and right index, middle ring and little fingers.
Subio .....	3rd degree burn over left eyebrow; 2nd degree burn below left eye.
Pejer .....	2nd degree burn on entire left side of face and left ear.
Baron .....	Deep laceration one and a half inches long, vortex of scalp.
Gonzar .....	Right leg severely crushed between two piles of steel.
238 Webber .....	Compound fracture of distal phalange of left ring finger.
Oponik .....	Severe infection of middle finger of left hand; palmer surface of middle phalanx right middle finger.
Fisher .....	Crane passe dover body; fatal.
Hanns .....	Severe contusion, right side.
McDowell .....	3rd degree burn 1½ by 2 inches over forehead.
Jeffers .....	Laceration 1½ inches long; vortex of scalp.
Guamo .....	Deep seated particle in center of left cornea and visual field; infected.
Roceriquez .....	Compound fracture of middle phalanx of left thumb.
Blankenship .....	2nd degree burn on left side of face, and ear.
Long .....	Severe conjunctivitis, both eyes.
Coleman .....	Puncture, one by one and a half inch deep, over right inguinal region.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Dolton .....	Hot scale in upper corner of right eyelid.
Babcock .....	Heat prostration; temperature 101.
Wilson .....	Laceration $\frac{1}{2}$ inch below left knee.
Zuschlax .....	Conjunctivitis of both eyes.
239 Thompson .....	Contusion of all toes of right foot.
Davis .....	Contusion of dorsal of entire right hand and all fingers.
Mitchell .....	Laceration 3 inches long anterior surface, upper third of right leg.
Zekusia .....	2nd degree burn, dorsal surface, left thumb.
Laskowski .....	Crushing injury to left second, third and fourth toes; middle phalanx of left third toe.
Crepps .....	Compound comminuted fracture and dislocation of right ankle; fracture of right anterior malleolas and distal one-third right fibula; deep laceration 4 inches long over right internal malleolas, with bone of joint projecting.
Lypus .....	Laceration 2 inches long, vortex of scalp; severe strain of neck. 27 days.
Anderson .....	First finger amputated; 36 days.
Brennan .....	Burn on left hand with hot oil; 15 days.
Rensel .....	2nd and 3rd fingers of left hand severely mashed; 30 days.
Huffman .....	Crushing injury to right great toe with laceration of nail area and laceration $\frac{1}{4}$ inch long on plantar surface of distal phalanx; 30 days.
240 Patolichis .....	Punctured wound $\frac{1}{2}$ inch deep over first right metatarsal; 32 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Linge .....	Squeezing injury to right knee joint, with fracture of lower half of patella; patella torn loose at lower insertion internal ligaments of knee joint lacerated allowing partial dislocation; 73 days.
Sarafin .....	3rd degree electrical burn 3 by 3 inches over exterior surface of left knee joint; 30 days.
Zaport .....	Right leg crushed between two piles; 41 days.
Noronovich .....	Infected right middle finger; 118 days.
Marchenisk .....	Simple oblique fracture of middle third of right radius of right arm; 97 days.
Ginaris .....	Amputation distal half of distal phalanx of right thumb; squeezing injury to distal phalanx, right index finger, with laceration $\frac{1}{2}$ inch over palmer surface.
Barnes .....	Triple fracture of right internal malleolus; severe strain of ankle; 42 days.
Demonak .....	2nd and 3rd degree burns on right hand; 57 days.
Stender .....	Laceration through inner half of right eye ball, penetrating both chambers; loss of sight.
Wilkinson .....	3rd degree, hot metal burn encircling both ankles; 28 days.
241 Varga .....	Compound fracture of fibia and tibia of left leg; 124 days.
Kowalski .....	Fracture of left leg at juncture of upper and lower third; abrasion 2 by 2 inches on right fore-arm; contusion and laceration under eye, and above right eye; deep laceration 2 inches, at base of skull; loss of hearing in left ear; 115 days.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Ruffin .....	Hot metal 3rd degree burn of right foot, over entire surface; tips of toes burned off; plantar fascia burned through; 3rd degree burn over upper third of thigh, inner and outer surfaces; 3rd degree burn of entire dorsal surface proximal phalanx of left middle finger.
Jackson .....	Hot sand got in glove; 14 days.
Swezy .....	3rd degree burn 1½ by 1½ inches over right tendon Achilles; 32 days.
Sabo .....	Compound fracture of bone in left fore-arm, and abrasion of second and little fingers of hand; 49 days.
Kelly .....	Squeezing injury of left foot; severe strain of ankle; 24 days.
Kobadosky .....	Amputation of left ring finger through distal third of middle phalanx; 20 days.
Scheninoki .....	3rd degree burn 2 by 2 inches on instep of right foot; multiple 3rd degree burn down back, from shoulder to buttocks; 39 days.
242 Jaros .....	Forefinger of left hand crushed; 53 days.
Yatka .....	Severe strain of right ankle, with probably fracture of external malleolus swollen and discolored; 21 days.
Sargenti .....	Crushed injury to left fourth toe, with deep laceration 1 inch long over plantar surface and loss of nail; 45 days.
Dongur .....	Puncture wound 1½ inch long, anterior surface, middle third left leg infected; 16 days.
Benford .....	3rd degree burn upper and lower lid, near inner canthus; 30 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Figkino .....	Crushing injury to distal phalanx left middle and ring fingers; loss of nails, and laceration of nail area; compound fracture of distal phalanx left middle finger, with loss of distal half of distal phalanx; 105 days.
Marchetti .....	Contusion over 2nd, 3rd, 4th and 5th metatarsals, with possible fractures; 44 days.
Furko .....	Fracture of right ankle; 42 days.
Lewis .....	Crushing injury to right left finger, with compound fracture of distal phalanx; deep laceration $\frac{1}{2}$ inch long on palmer surface; 30 days.
Lunden .....	Loss of left eye.
243   Zalinski .....	Severe contusion of left hand and bone crushed to second phalanx; 27 days.
Athereton .....	Right foot severely burned; 21 days.
Wasylo .....	Steel in corner of left eye.
244   Franko .....	Great toe of left foot fractured; 100 days.
Marosky .....	Right side sprained; 38 days.
Gasak .....	Right wrist burned; 20 days.
Smith .....	Thumb badly crushed; nail had to be removed; 66 days.
Furie .....	Left hand bruised; 25 days.
Betts .....	Back sprained; 14 days.
Comonouico .....	Right arm bruised and swollen; 55 days.
Simasha .....	Upper lip cut and leg bruised; 32 days.
Francieh .....	Left wrist bruised by handle of winch; 30 days.
Miklulack .....	Piece of steel in left eye; 15 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Zaknak .....	Left leg burned; 28 days.
Reed .....	Back and shoulders burned; 40 days.
Kaninski .....	End of second finger crushed; 22½ days.
Gaglia .....	Third finger left hand injured; 210 days.
Sullivan .....	Right arm pinched and bruised at elbow; 22 days.
245 Goocher .....	Face burned; 28 days.
Reguly .....	Left foot bruised; 45 days.
Drevjanka .....	Leg bruised; 29 days.
Nemchek .....	Left leg burned; 39 days.
Kacsursky .....	First finger of right hand badly bruised; 41 days.
Holte .....	Face burned; 14 days.
Seitz .....	Left side of back bruised just below waist; left sacra iliac separation of moderate degree; 18½ days.
McCarthy .....	Foot burned; 41 days.
McClain .....	Ankle of left foot slightly burned; 20 days.
Breslin .....	Right hand badly cut; 21 days.
Toth .....	Right side injured; 27 days.
Blechman .....	Top of left foot bruised, possibly some small bones broken; 64 days.
Miller .....	Right shoulder bruised; 12 days.
Hassen .....	Back sprained; 26 days.
Grokol .....	Index finger left hand bruised; 25 days.
Kosceki .....	Left foot bruised; 28 days.
Prissol .....	Foot badly bruised; 34 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
246 Markovitz .....	Eye badly inflamed; foreign body embedded in eye; 22 days.
Lukaesek .....	Injury to abdomen; 50 days.
Keller .....	Left eye injured; 42 weeks.
Vargo .....	Large toe of right foot badly bruised; 60 days.
Utesch .....	Right foot bruised; 42 days.
Skalehas .....	Right leg badly bruised; 42 days.
Keim .....	Both hands and right side of face and neck burned; 39 days.
Horvath .....	Right rib fractured; 40 days.
Belich .....	Back bruised; 12 days.
Custra .....	Back of right hand bruised and cut; 63 days.
Neznjke .....	Neck and shoulders bruised; 35 days.
Bajer .....	Scalp wound; 37 days.
Yancek .....	Right arm badly crushed; 133 days.
Dust .....	Index finger of right hand badly crushed; 26 days.
Krzmaric .....	Third finger on right hand crushed; 32 days.
Tomko .....	Great toe of left foot crushed; 14 days.
Dibel .....	Finger poisoned and inflamed; 12 days.
247 Palikan .....	Index finger of right hand cut; 18 days.
Slacjn .....	Acid burn on left side of face and both arms; 13 days.
Kline .....	Left shin bruised; 65 days.
Clark .....	Left hand badly mashed near wrist; 103 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Graves .....	Oil and wax skin cancer on right hand; 34 days.
Kovach .....	Bruised back and right leg; 14 days.
Wallace .....	Loss of right eye.
Szaba .....	Face burned; 14 days.
Kozlowski .....	Rupture of left side.
Vukulic .....	Arms and shoulders covered with boils from oil and wax; 3 1/7 weeks.
Radich .....	Hernia; 35 days.
Partigan .....	Burned face and hand.
Viianelli .....	Acid and oil in right eye; 10 days.
Yackshaw .....	Tooth cracked and upper lip cut; 16 days.
Arsenault .....	2nd finger smashed; 15 weeks.
Kranz .....	Burned right foot; 22 days.
Egri .....	Leg burned above knee; 41 days.
248 Quinn .....	Fractured skull.
Jarasack .....	Head and back injured and cut on hand; 15 days.
Bent .....	Eye burned with light; 28 days.
Felinak .....	Small sores on right hand; 14 days.
Corcoran .....	Face badly burned; 12 days.
Fitzimmons .....	Flesh burned around right ankle; 14 days.
Cronowicz .....	Boils on arms from wax and oil; 31 days.
Kronik .....	2 toes crushed; 28 days.
Slancannin .....	Middle finger of left hand cut; 19 days.
Koscis .....	Nail on great toe loosened; 15 days.
Tyndal .....	Leg broken above knee; 161 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Wormik .....	2nd finger on right hand badly bruised; 23 days.
Gross .....	Abscess palmist surface right hand; 21 days.
Scluman .....	Head cut; 58 days.
Ludwig .....	First 3 fingers of left hand cut badly; 23 days.
Stefanowski .....	Left arm cut above elbow; 31 days.
249 Vine .....	Right leg broken between knee and hip; 94 days.
Margetic .....	Right leg sprained; 19 days.
Evanich .....	Hand burned; 25 days.
Gorges .....	Face and hands burned; 22 days.
Murray .....	Neck broken; fatal.
Fontin .....	Contusion of back and right side.
Cappage .....	Right leg blistered.
Antonovich .....	Left eye burned.
Haas .....	Left thumb badly bruised.
Naef .....	Right arm broken, and body bruises.
Dunov .....	Right ankle sprained.
Bano .....	Back and shoulders burned.
Dado .....	Burns on large portion of body; fatal.
Redsky .....	Left side of head bruised.
Trejak .....	Slight laceration on leg above shoe top.
Nargie .....	Finger on right hand bruised.
Hammersley .....	Back of left hand badly burned.
Belle .....	First three fingers of left hand bruised.
Bendra .....	Cut on forehead.
250 Jewett .....	Eye injured.

Name of employee.	Character of injury, extent of disability, or compensation awarded.
Quastrom .....	Pierce of glass in eyelid.
Titus .....	Back strained in lifting.
Town .....	Bruise on shoulder.
Dineen .....	Eyes poisoned.
Ralkin .....	Scalp wound.
Kovach .....	Hands blistered.
Greavn .....	Little finger on left hand badly bruised.
Shelby .....	Broke left leg above knee.
Lonsar .....	Eye inflamed.
Biro .....	Left eye injured.
Schofield .....	Face cut and bruised.
Westmy .....	Face and right arm burned.
Cole .....	Right hand slightly burned.
Sluka .....	Strain on right side.
Cikulin .....	Injured internally.
Barbee .....	Strained abdomen.
Hoppe .....	Left eye burned.
Pachick .....	Right foot and leg burned.
Korve .....	Right foot and wrist bruised.
251 Ivan .....	Foot badly bruised.
Estok .....	Right arm burned.
Vogel .....	Top of head bruised and scalp cut.
Blahunka .....	Back sprained.
(No name) .....	Back bruised.
Blandgarh .....	Back sprained.
Dorgan .....	Broken rib.
Kinsella .....	Eye injured.
Chernotta .....	Face badly burned.
Henrikson .....	Right leg broken between knee and ankle.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Dolan .....	Left hand bruised.
Chorley .....	Back sprained.
Burgess .....	Wrenched back.
Chance .....	Scalp wound; outer table frontal bone crushed; slight injury to hip; nose broken; injury to knee; minor cuts and bruises over body.
Smith .....	Strained back.
252 Payne .....	Strained hip.
Chambers .....	Mashed first finger of right hand.
Hardisty .....	Skinned right limb.
Walker .....	Sprained right ankle.
Krisa .....	Rupture of stomach.
Jones .....	Infected arm.
Hutton .....	Broken middle finger on left hand.
King .....	Broken wrist.
Hendrix .....	Injured right hip.
Farichild .....	Mashed left hand.
Schmitley .....	Bruised limb; 21 days.
Sluss .....	Broken shoulder; 16 days.
Bell .....	Infected left foot; 15 days.
Edwards .....	Splinter in right hand; 13 days.
Canatzy .....	Poisoned hand; 30 days.
Wells .....	Mashed right foot; 18 days.
Burton .....	Deep torn abrasion on underneath side of second finger of right hand; 21 days.
Luciani .....	Infection of right hand from scratch; 2 weeks, 3 days.
253 Burton .....	Right arm cut off.
Worley .....	Lacerated 2nd, 3rd and 4th fingers; 105 days.
Henry .....	Scalded right foot; 11 days.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Reynolds .....	Broken arm.
Hankins .....	Infected right hand; 11 days.
Evans .....	Sprained back; 13 days.
Buka .....	Broken right wrist bone; 60 days.
Maysie .....	Amputated right hand above wrist.
Jones .....	Lacerated left foot; 14 days.
Williams .....	Broken toe on right foot.
254 Johnson .....	Nail stuck in right foot.
Bracker .....	Nail in right foot.
Taylor .....	Bruised second toe on left foot.
Hulbard .....	Mashed finger.
Brown .....	Piece of lumber fell on right side of face.
Swan .....	Cut over right eye.
Smith .....	Bruises on both sides of head.
Tyler .....	Mashed thumb.
Berry .....	Injury to side.
Blunk .....	Right foot injured.
Haws .....	Face and neck burned.
Wellborn .....	Injured little toe on right foot.
Flynn .....	Side of foot wounded.
Frasier .....	Foot swelling.
Ferguson .....	Lower lip cut, bruised and swollen.
Pinkard .....	Slight injury to foot.
Milner .....	Strained hip and back.
Post .....	Sprained right ankle.
255 Davenport .....	Nail in left foot.
Kimbrew .....	Stepped on nail.
Hamline .....	Bruised left arm.
Calvert .....	Stepped on nail.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Miller .....	Ran nail in right foot.
Denchfield .....	Nail in left foot.
Hampton .....	Sprained back.
Baughmann .....	Cut arm at elbow.
Coy .....	Cement in eyes.
Layman .....	Ran spike under skin about 1 inch.
Denchfield .....	Cut above right eye.
Mentlow .....	Nail in center of right foot.
Hall .....	Cut middle finger on left hand.
Pierce .....	Bruised on back of right hand.
McCoy .....	Small cut on head.
Garard .....	Scalp wound and bruised arm.
Cave .....	Bruised left hand.
Ketrow .....	Cut on lips and nose.
Wilson .....	Fractured nose and badly bruised limb.
Van Cort .....	Injured knee.
256 Livingston .....	Frozen fingers of right hand.
Livingston .....	Rupture on right side.
Guy .....	Arch of right foot injured.
Liston .....	Small of back sprained.
Leonard .....	Fractured rib.
Nixon .....	Side injured.
Temple .....	Wrenched back.
Baver .....	Drill bit penetrated left thigh between hip and knee; 26 days.
Swan .....	Bone in foot injured; 18 weeks.
McNulty .....	Strained muscles of back; 21 days.
Huey .....	Injured back and right leg; 25 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Stonebraker .....	Smashed first and second finger of left hand; 24 days.
Shuck .....	Struck foot with pick; 16 days.
Welty .....	Back injured; 17 days.
Elpers .....	Sprained ligaments, etc. about left knee joint; 51 days.
Suits .....	Frozen finger; 21 days.
Toomey .....	Frozen finger.
Snowden .....	Eyes badly injured.
Garard .....	Infection of hand; 23 days.
257 Gordon .....	Fractured wrist, cut over left eye and bruised limb.
Robinson .....	Ran nail into lower part of right forefinger; 5 weeks.
Lehman .....	Nail penetrated right foot; 17 days.
Seyfried .....	Strained back; 10 days.
Long .....	Mashed little finger and bruised limbs; 28 days.
Breight ..	Right shoulder muscles bruised; thumb on right hand torn; 10 days.
Sedam .....	Cut off end of little finger on right hand.
Johnson .....	Compound fracture of the left leg and scalp wound.
Post .....	Fracture of the jaw; 26 days.
Noel .....	Cut gash in scalp on right side of head; 14 days.
Sullivan .....	Fracture of base of skull; fatal.
Judt .....	Nail in foot; 25 days.
Wolf .....	Bruised left foot; 31 days.
Mayden .....	Left forearm cut; 21 days.
Miller .....	Blood poisoning; 13 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Lindner .....	Little and ring finger with hammer.
Padgett .....	Eye inflamed; 25 days.
Manier .....	Bruised eye ball.

258 Hoosier Manufacturing Company, New Castle, Indiana,  
Manufacturers of Kitchen Cabinets.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Halpin .....	Cut on head.
Hutchinson .....	Right foot bruised.
Dudley .....	Mashed toe.
Selke .....	Bruised arm.
May .....	Gash on forearm.
Gibson .....	Glass in eye.
Dock .....	Bruised both feet.
Cormichial .....	Feet mashed.
Moffitt .....	Hand injured.
Jones .....	Two fingers mashed.
Dalzell .....	Cut left index finger off between proximal and metacarpal articulation, and mashed the end of left second finger.
Zell .....	Hand and arm mashed; 27 days.
Bruce .....	First and second fingers amputated at proximal articulation; small part of bone of proximal phalanx being removed; right third finger lacerated, involving a permanent impairment of 33 1/3 per cent; 70 weeks.
Prichett .....	Left third and fourth finger crushed off, requiring amputation at proximal articulation; left third finger lacerated.
259 Reger .....	Large toe on right foot, mashed.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Justice .....	Little finger on right hand mashed on tip, requiring amputation midway between distal and proximal articulation.
Breese .....	Left thumb amputated at metacarpal Phalangeal articulation; left first finger badly lacerated.
Almay .....	Hand cut; 10 days.

260      Ingalls Stone Company, Stone Constructors.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Davis .....	Left arm sprained; chin bruised.
Hancock .....	Finger mashed.
Henderson .....	Great toe mashed.
Spear .....	Skinned right side of body.
Adams .....	Mashed large toe.
Eade .....	Piece of steel in eye.
Vaught .....	Right kidney torn loose.
Reed .....	Head cut and leg bruised and one rib broken; 31 days.
King .....	Both legs bruised; 13 days.
Woodward .....	Toe mashed severely; 17 days.
Ira .....	Ribs broken and bruised, generally.

261      Aetna Explosives Company, Manufacturers of Explosives.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Stell .....	Head, arms, shoulders and legs burned.
Bupp .....	Burned about forehead, ears, eyes and chin.
Mangoulis .....	Burn of right eye.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Rushing .....	Overcome by chlorine gas.
Scott .....	Burns on left elbow and left hand.
Landreth .....	Slight burns about face.
Gerez .....	Bruises and contusion of back; 6 days.
Crisman .....	Burns about face.
Luszez .....	Burned about eyes.
Barko .....	Burned in left eye.
Ale .....	Left testicle swollen; marked evidence of hernia.
Anderson .....	Burned about eyes.
Dibrickson .....	Right eye burned.
Meeks .....	Burned face and hands.
Warhop .....	Burned back of right leg below knee, and heel of right foot.
Stecz .....	Acid in eye and burned about left side of face.
Gautier .....	First degree burn of right thigh.
262 Harrison .....	Burned about face, right arm and chest.
Johnson .....	Piece of emory wheel flew off into eye.
Shaneberger .....	First and second degree burns on forehead, right arm and chest.
Gabrill .....	First and 2nd degree burn of chest; splashes of acid on right arm.
Burdick .....	2nd degree burn on arm; first degree burn on chest and small area on forehead.
Hill .....	Bruises and contusions of both feet, especially the right foot.
Kemple .....	First and second degree burn of chest, arms and face.
Miskunas .....	Burn of right eye; burn on lids of left eye; acid splash in eyes.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Thayer .....	First and 2nd degree burns of forehead, nose, right ear, chest and right thigh.
Shaneberger .....	2 lacerations on left foot about ankle, one requiring 2 stitches and the other requiring 3 stitches.
Cervantes .....	Burned about upper face, first and 2nd degree.
Padilla .....	Burned about face.
Hays .....	Burned about face.
Grass .....	First and second degree burn of left arm and left side of body to knee.
263 Mandelker .....	Both eyes burned.
Berg .....	Burned about face, arms and chest.
Kelly .....	Second degree scalds of back, thigh, left leg below knee and left hand.
Moon .....	Fracture of second phalanx of first toe left foot; fracture of first phalanx of 2nd toe left foot, and bruise of upper part of left foot.
Georgevich .....	Burn on face and left ear.
Gregory .....	Badly sprained right ankle; contusions on both knees and right legs; small laceration on forehead. X-ray shows fractured third metatarsal bone.
Miller .....	Acid burns about lids of both eyes; left eye burned slightly and small burns about forehead.
Norris .....	Electrical shock causing instant death.

## 264 Indiana Quarries Company, Stone Quarry.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Anauttes .....	Breast bruised.
Hays .....	Eyes burned.
Blinegar .....	Left knee bruised.
Queen .....	Right hand bruised; 23 days.
Anderson .....	Left ankle and foot sprained; 14 3/7 weeks.
McPheters .....	Cut and burn of toe; 11 days.
Owens .....	Left shoulder bruised; 3 4/7 weeks.
Gray .....	Right ankle sprained; 100 days.
Gleason .....	Sprained right knee; 12 days.

## 265 Caldwell-Marshall Company, Jeffersonville, Indiana.

(Contractors.)

Name of employee.	Character of injury, extent of disability, or compensation granted.
Mack .....	Contusion of 7th and 8th ribs on right side with development of traumatic pleurisy.
Haggard .....	Foot mashed and leg below knee skinned
Alexander .....	Bruised muscles of back.
Richard .....	Middle finger of left hand mashed.
Norman .....	Sprined back.
McEwen .....	Bruise and straight cut on top of right foot; probably fracture of metatarsal bone; 25 days.
McCain .....	Finger cut off.
Mills .....	Fracture of radius in middle third, about four or four and a half above right wrist joint of left arm; 56 days.



Name of employee.	Character of injury, extent of disability, or compensation granted.
Jordan	Bruised muscles in right hip; 19 days.
Missi	Left hand injured.
Dorsey	Bruised back; left ankle sprained; left hip lacerated and bruised.
Wilson	Scratched right leg; muscles bruised; 27 days.
Bennett	Nail stuck in wrist; 21 days.
266 Ganstein	Mashed foot; 17 days.
Harris	Mashed finger; finger nail pulled out; 16 days.
Steidinger	Fractured metatarsal bone; 57 days.
Dahringer	Oblique fracture of middle metacarpal bone of left hand, with small piece of bone broken off and free in soft tissues.
Martiena	Lacerated wound of second and third fingers of left hand; 55 days.
Rowen	Fracture of metatarsal bones on right foot, with contusion of dorsal surface of right foot; 71 days.

267 Wood Mosaic Company, Vencer Manufacturers.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Venable	Fractured ribs and broke another rib loose from breast bone; the latter torn loose again Feb. 14.
Pelluan	Contusion and strain of muscles of right side of chest and abdomen.
Murphy	Overcome from heat.
McGuire	Wrenched ligaments of knee.
Colder	Severe sprain of right knee.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Yaggie .....	Foot mashed and bruised.
Budd .....	Wrenched back.
Freeman .....	First and second toes of left foot lacerated.
Jackson .....	Toe on left foot mashed; 13 days.
Frederick .....	Lacerated wound on ball of thumb and end of first finger of right hand; 19 days.
Martin .....	Cut shin to bone; 14 days.
Buck .....	Hernia; 4 months.
Donahue .....	Cut first finger on left hand; slip at end, to bone.
Young .....	First finger of left hand badly mashed below first joint; will probably have to be amputated; 1 month.
268 Salmon .....	Cut ball of right thumb; 2 weeks.
McCombs .....	Cut first finger on left hand; 1 month 3 days.
Pruit .....	Split first and second fingers on right hand; 2 week 3 days.
Spry .....	Ligament torn loose and shoulder bruised; 7 weeks.
Rakestraw .....	Foot pinched and sprained; 29 days.
McGuire .....	Wrenched ligaments in knee; 9 days.
Dennison .....	Injured back and right side; simple fracture of 10th rib; 3 weeks.
Donahue .....	Cut off tip of right thumb; 3 weeks and 4 days.
Dovasha .....	Punctured wound ring finger of left hand; 118 days.
Manta .....	Right side of both arms burned; 14 days.
Wolen .....	Cut finger; 14 days.

Name of employee.	Character of injury, extent of disability, or compensation granted.
Donahue .....	Cut all four fingers across back; 3 weeks and 1 day.
Miller .....	Cut 2nd and 3rd fingers on left hand through bone; 2nd finger cut just below nail; 3rd finger cut between first and second joint; 5 weeks and 5 days.
269 Wolf .....	Bruised hip; 2 weeks.
Erdman .....	Split left thumb; 7 weeks.
Budd .....	Both bones of left leg broken below knee; 124 days.
Buckheit .....	Finger badly mashed.
Wolfe .....	Cut 2nd finger of left hand very badly; amputation necessary of finger at 3rd joint; 30 weeks.
Williams .....	First finger of left hand cut very badly; amputation necessary; back of second finger also cut; 25 weeks.
Guildemaus .....	1st and 2nd fingers of left hand badly cut; 30 weeks.
Sands .....	Left leg bruised below knee; 2 weeks.
Thomas .....	Spli. little finger of left hand; 31 days.

The above condensed statement of the evidence is true, complete and correct and is hereby approved this 7th day of October, 1919.

ALBERT B. ANDERSON,

*Judge.*

270

*Citation.*

THE UNITED STATES OF AMERICA, *vs.*:

To Industrial Board of Indiana, Edgar A. Perkins, Kenneth L. Dresser, and Samuel R. Artman, as Members of the Industrial Board of Indiana; Edgar A. Perkins, Kenneth L. Dresser and Samuel R. Artman:

Whereas, Lower Vein Coal Company has lately appealed to the Supreme Court of the United States from a decree and judgment lately rendered in the District Court of the United States for the District

of Indiana, made and entered in favor of you, and has filed the receipt required by law.

You are therefore cited to appear before the said Supreme Court at the City of Washington, District of Columbia, on the 25th day of October, 1919, next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand this 29th day of September, A. D. 1919.

ALBERT B. ANDERSON,  
*Judge.*

Service of the above citation is admitted and the receipt of a copy thereof acknowledged this 29th day of September, 1919.

ELE STANSBURY,  
*Attorney General of Indiana,  
Solicitor for Defendants.*

271 In the District Court of the United States for the District of Indiana.

I, Noble C. Butler, Clerk of the District Court of the United States for the District of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record according to the precept in the case of Lower Vein Coal Company vs. Industrial Board of Indiana, et al., as the same appears of record in my office.

Witness my hand and the seal of said Court, at Indianapolis, in said District, this 11th day of October, 1919.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,  
*Clerk.*

Endorsed on cover: File No. 27,328. Indiana D. C. U. S. Term No. 573. Lower Vein Coal Company, appellant, vs. Industrial Board of Indiana et al. Filed October 16th, 1919. File No. 27,328.

FILE COPY

MAY 29 1920

JAMES D. MAHER,  
CLERK.

IN THE  
**Supreme Court of The United States**

October Term, 1919.

No. 573.

186

LOWER VEIN COAL COMPANY,

*Appellant,*

VS.

INDUSTRIAL BOARD OF INDIANA, ET AL.,

*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF INDIANA.

**BRIEF AND ARGUMENT FOR APPELLANT.**

Together with an Appendix Containing for Convenience the  
Workmen's Compensation Law of Indiana and a  
Synopsis of Certain Decisions, with Respect to  
the Workmen's Compensation Laws of  
Various States.

HENRY W. MOORE, ✓

SAMUEL D. MILLER, ✓

FRANK C. DAILEY,

WILLIAM H. THOMPSON, ✓

*Attorneys for Appellant.*

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IN THE

# Supreme Court of The United States

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October Term, 1919.

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LOWER VEIN COAL COMPANY,	}	No. 573.
<i>Appellant,</i>		
vs.		
INDUSTRIAL BOARD OF INDIANA,		
<i>Appellee.</i>		

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES.

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## STATEMENT OF THE CASE.

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### QUESTION INVOLVED.

Under Section 18 of the Workmen's Compensation Act of Indiana, as amended in 1919 (Acts 1919, at page 160), all coal mining companies, including appellant, are required to operate under the provisions of the Workmen's Compensation Act, which is made mandatory as to them, and as to the State and its political subdivisions and municipal corporations. As to all other employers the Act remains a permissive one, and they may elect to operate under its provisions, except that railroad employees engaged in train service do not come within the provisions of the law.

The sole question presented by this appeal is the validity of said Section 18, as amended. Appellant's grounds of attack are as follows:

(1) That it (Section 18, as amended) violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

(2) That it violates the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows:

"The General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

Section 68, Burns' R. S. 1914.

(4) That it violates Section 21 of the Indiana Bill of Rights, reading as follows:

"No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."

Section 66, Burns' R. S. 1914.

The question to be considered is whether the Indiana General Assembly may pass a general compensation law, applicable to all employers within the State, and make it compulsory as to one hazardous employment, and elective as to all others (many equally hazardous) except railroad employees in train service to which it does not apply at all.

We insist that such a classification rests upon no sound or just basis, and is violative of the Constitution of the United States and of the constitution of the State of Indiana in the several particulars above indicated.

## STATEMENT OF FACTS.

### COMPLAINT.

The facts alleged in the bill of complaint are as follows:

Appellant is a corporation organized under the laws of Indiana, and engaged in mining and marketing coal, employing five hundred men in its business in the State of Indiana; that all the contracts for hiring its employees are made within the State of Indiana. (Transcript, page 2.)

That defendant Industrial Board of Indiana is a board created by the Workmen's Compensation Law of 1915, and the individual defendants are members of said Board. (Transcript, page 2.)

That the General Assembly of 1915 enacted a Workmen's Compensation Law, which was amended in 1917; the bill then sets out the amendments to the law, made in 1919. (Transcript, pages 3 to 16.)

That the Act of 1915, as amended in 1917, was a permissive act; that plaintiff elected to reject the law in 1915, which written rejection is set out. (Transcript, pages 16-18.)

That said election has never been withdrawn. (Transcript, page 19.)

That on April 9, 1919, plaintiff served on defendant Industrial Board of Indiana a notice in writing that it refused to comply with the amendments made to the Work-

men's Compensation Law by the General Assembly of 1919, because such amendments were unconstitutional and void and deprived plaintiff of its property without due process of law and denied it the equal protection of the law, in violation of the provisions of the Constitution of the United States and of the State of Indiana. (Transcript, page 19.)

That the defendants claim that said amendatory act of 1919 is a valid law and compels all coal mining companies, including plaintiff, to operate under said compensation law; that it is the intention of the defendants to assume jurisdiction and to hear complaints and render awards and that it will, unless enjoined by the court, take jurisdiction of claims for compensation made by employees of coal mining companies, including plaintiff, and will proceed to enforce said law. (Transcript, pages 19 and 20.)

That in plaintiff's business in Indiana there have occurred from time to time in the past, and will in the future occur, accidents to plaintiff's employees resulting, without any negligence on plaintiff's part, in injuries to plaintiff's employees in the line of their duties and in the course of their employments; that claims for compensation for such injuries will be filed by such injured employees or their dependents with the Industrial Board of Indiana, and compensation will be awarded in practically all of said cases; on information and belief plaintiff alleges that during the remainder of the year 1919, there will be more than twenty-five such accidents for which compensation will be claimed; that the compensation made will exceed \$25,000; that plaintiff will be compelled to defend these claims and to expend in attorneys' fees and expenses \$5,000 during the remainder of 1919. (Transcript, pages 20 and 21.)

That under and by virtue of the terms and provisions of Section 18 of the Workmen's Compensation Act as amended in 1919, said Act is now mandatory and compulsory, if said law be valid, upon the State of Indiana, its political subdivisions and all municipal corporations, and upon persons, partnerships and corporations engaged in mining coal and the employees thereof, and is optional and permissive as to all other employers and employees within the State of Indiana; that persons, partnerships and corporations engaged in the coal mining business are the sole and only private employers and corporations who are compelled to operate under said Workmen's Compensation Act. (Transcript, page 21.)

That the business of mining coal is a hazardous one, but there are many other businesses conducted in the State of Indiana in which thousands of men are employed, which are more hazardous than the business of mining coal, and many other businesses in which thousands of men are employed annually in the State, which are equally as hazardous as the business of mining coal. (Transcript, page 21.)

The bill then sets out the number of injuries for the year ending October 1, 1917, and the year ending October 1, 1918, to employees of steam railroads, iron and steel industries, manufacturing and machine shops, auto manufacturing and repairing, coal mining, general contractors, furniture manufacturing, car manufacturing and repairing, foundries and glass manufactories, showing that in each of such years in the number of accidental injuries the coal mining business was fifth. (Transcript, page 21.)

That Section 18 of the Workmen's Compensation Act of Indiana, as amended by the General Assembly of Indiana for the year 1919, is unconstitutional and void, and that it



violates the provisions of the Fourteenth Amendment and deprives plaintiff of its property without due process of law and denies to the plaintiff the equal protection of the law, in the following particulars:

(a) That the classification attempted in said Act is arbitrary and discriminatory, and is not based upon any just or reasonable ground, but that the General Assembly has passed a law arbitrarily and without any fair reason, making the Workmen's Compensation Act compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal and permissive, or voluntary, as to all other businesses within the State of Indiana.

(b) It denies the plaintiff the equal protection of the laws, because it is not equal or uniform in its operation, but singles out the line of business in which the plaintiff is engaged, the same being a lawful business, and imposes onerous burdens upon such business, and upon the plaintiff, and upon others engaged in the same business as the plaintiff, without imposing like burdens upon others engaged in similar business within the State of Indiana, and upon others whose businesses are equally hazardous, and more hazardous than the business of the plaintiff.

(c) That said Act deprives the plaintiff of its property without due process of law, in that it imposes burdens upon the plaintiff, not imposed upon other persons, partnerships and corporations similarly situated and engaged in business of equal, or greater hazard.

(d) That said Act, in its provisions, is partial, unreasonable, oppressive and unequal.

(e) That the classification fixed by said law rests upon no sound or reasonable basis, but is wholly arbitrary. (Transcript, page 22.)

That said Act is invalid because it violates Section 23 of Article I of the Bill of Rights of the Constitution of Indiana for the following reasons:

(a) Because the said Act grants to other citizens, and classes of citizens, the privileges and immunity of not coming under the provisions of said law, which it does not grant upon the same terms and equally to the plaintiff and others engaged in the business of mining coal within the State of Indiana.

(b) Said Act is discriminatory against the plaintiff, and all other persons, partnerships and corporations engaged in the business of mining coal, which is a lawful business, and in favor of other equally hazardous and dangerous businesses.

(c) There is no basis for the classification fixed by said Act, and said classification is unjust, oppressive and discriminatory. (Transcript, page 23.)

That said Act is invalid because it violates Section 21 of Article I of the Bill of Rights of the Constitution of Indiana for the following reasons:

(a) Because plaintiff's property would be taken by awards made by the Industrial Board of Indiana, where there was no negligence, or fault upon the part of the plaintiff; and other persons, firms and corporations engaged in business equally, or more hazardous, would not be subjected to the same liability.

(b) Because the private property of this plaintiff would be taken by virtue of the awards of the Industrial Board of Indiana, as heretofore averred, without any negligence on the part of this plaintiff, and in disregard of the question as to whether or not this plaintiff was negligent, for the

alleged public purpose of protecting the State of Indiana, and without compensation to the plaintiff.

The prayer of the bill is for an injunction, after notice, restraining the Industrial Board of Indiana from hearing any claims for compensation or making any awards, and that upon final hearing said Section 18 as amended be declared invalid and void, as violative of the State and Federal Constitutions, and that a perpetual injunction be issued, restraining the defendants and their successors in office from enforcing in any manner the provisions of said act as amended. (Transcript, page 24.)

The Workmen's Compensation Act of 1915, as amended in 1917, is set out. (Transcript, pages 25 to 42.)

#### AMENDMENT TO BILL OF COMPLAINT.

By amendment to its bill, plaintiff alleged that the various corporations, co-partnerships and individuals engaged in the coal mining business have hundreds of employees who are employed above the ground, in clerical work, hauling, carpentering and similar occupations; that plaintiff has many such employees who are not coal miners and do not dig coal, and that all of said employees are covered by the provisions of said Section 18, and, if said section is valid, are entitled to compensation without regard to plaintiff's negligence for any injuries sustained by them. (Transcript,, page 44.)

That practically without exception all persons engaged as employees in the actual mining of coal in Indiana are members of the United Mine Workers of America, which is a labor union organized and maintained for the protection of its members; that said United Mine workers' Union em-

employs in Indiana attorneys, whom it pays by the year, to attend to the interests of its members, which attorneys are employed to and do prosecute without expense to injured employees or their dependents, all suits for personal injuries brought by said members in the State of Indiana, and that, whereas in other occupations industrial workers have large sums of money to pay frequently on a contingent basis to lawyers representing them in their suits for personal injuries, injured coal miners and their dependents receive, without abatement or payment of attorneys' fees, all damages recovered by them for personal injuries; that persons actually employed in Indiana in the coal mining business are paid for their services a higher rate of wages or compensation than any other industrial workers in Indiana; that many of them do carry policies of insurance protecting themselves and their families against injuries resulting in accident and death. (Transcript, pages 44 and 45.)

That said Act is invalid because it includes within its terms all employees of coal mining companies, whether engaged in the hazardous part of the coal mining business or not, and is mandatory as to all such employees and as to the employers of all such employees, whereas, as to employees of other private business corporations, it is not mandatory as to those engaged in the non-hazardous part of the business but is permissive only, and excludes from its operation railroad employees engaged in train service. (Transcript, page 45.)

#### DEFENDANT'S ANSWER.

Defendant's answer alleges that the Workmen's Compensation Act of Indiana of 1915, as amended in 1917, was not a permissive act but was compulsory as to the tState of

Indiana, its political subdivisions and municipalities, and expressly exempted therefrom casual laborers, farm agricultural laborers, and domestic servants, unless such last named employees and their employers voluntarily elected to be bound by said Act. (Transcript, page 46.)

That the Industrial Board of Indiana claims that the amendatory Act of 1919 is valid and effective, and asserts that the compulsory features of said Section 18 are valid, and admits that it is their intention to assume jurisdiction of claims for compensation asserted thereunder. (Transcript, pages 46 and 47).

That the Indiana Legislature based the classification made in Section 18 partially upon the fact that many accidents had theretofore occurred in the operation of coal mines in Indiana, including the mines of plaintiff, which accidents resulted in the death of and injury to employees in the course and arising out of their employment, and that in many of such cases such employees had no redress at law and that in such cases where employees were afforded redress at law, such redress was found by said General Assembly to be inadequate, expensive and accompanied by vexatious delays, and that the occupation of mining coal had been extremely hazardous and will continue so to be, and that said occupation of coal mining theretofore contained, and will continue to contain, inherent hazards and dangers not encountered or contained in any other occupation, business or industry carried on in Indiana. (Transcript, page 47.)

That the business of mining coal is more hazardous than any other business, occupation or industry carried on and conducted in Indiana, in this, that in proportion to the men employed in the business of mining coal the percentage of

casualties is greater than in any other business; that the percentage of fatalities occurring in the operation of coal mines is greater than in any other business; that the nature and extent of injuries received by employees in such business are more severe, serious and aggravated than those received by employees in other businesses; that the hazards and dangers inherent in the operation of coal mines are more numerous, diverse and varied than any other occupation in Indiana. (Transcript, page 47.)

That the number of employees employed above ground in operating coal mines is small and will not exceed on an average of ten per cent. of the total employees; that in the year 1918 more than one hundred casualties occurred among employees working above ground, ten of which were fatalities; that the duties of a large per cent of employees working above ground are dangerous and hazardous. (Transcript, page 48.)

That all persons engaged as employees in mining coal, except company men, are members of the United Mine Workers of America; that said union employs attorneys at an annual salary, to handle and prosecute personal injury claims, all from funds voluntarily paid by said employees; that practically all of the owners and operators of coal mines in Indiana were and are organized into an association known as the "Indiana Coal Operators' Association"; that such association now employs and for many years has employed attorneys to look after the interests of the operators, including matters of legislation, and that such association employed attorneys to test the validity of said Workmen's Compensation Act as amended in 1919; that ninety-two persons, firms and corporations engaged in the operation of a majority of the coal mines in Indiana, are members of an-

other reciprocal insurance organization, which employs managers and agents for the purpose of defending suits and securing releases from liability for personal injury claims; that plaintiff is a member of said organization; that the members of said organization have rejected the provisions of the Workmen's Compensation Law of 1915 as amended in 1917, and, if Section 18 as amended in 1919 is declared void, that the members of said Association will reject the provisions of the Workmen's Compensation Law and that their employee will be subjected to the delays, expenses and inadequate settlements necessarily incident to the assertion of their claims under the liability laws of Indiana; that many of them will not be able to establish their claims and they will be without remedy or redress and will become objects of charity. (Transcript, pages 48 and 49.)

That the allegation in plaintiff's amended bill that persons employed in Indiana in mining coal were paid a higher rate of wages than any other industrial workers in Indiana is based upon statistics for the period of world war, during which time the coal mines of Indiana operated full time and full capacity, which resulted in an abnormal increase in wages, but that both prior and subsequent thereto the earnings of miners were materially less than during said war period and materially less than many industrial workers. (Transcript, page 49.)

That the General Assembly of Indiana had the power under the Fourteenth Amendment to make the classification as specified in Section 18 as amended, in the exercise of its police power; that said classification is founded upon a reasonable basis and does not offend as against the equal protection clause of the Fourteenth Amendment; that said classification should be sustained. (Transcript, page 49.)

The answer then sets out (pages 50 and 51 of the Transcript) how coal mines are operated and the dangers incident to their operation, alleging, among other things, that men are injured, wounded and killed in the operation of coal mines on railroad cars, screens, shakers, engine rooms, boiler rooms, pulleys, belts, dynamos, wash houses, scales, blacksmith shops, tipples, cages, bottoms of shafts, entries, cross entries, track-ways, haulage-ways, switches, frogs, uninsulated machine wires, uninsulated trolley wires, trimming flats, motor trips, motor cars, coal cars, mules, mule trips, mining machines, cutter bars, falls from roofs, falls from loose coal, electrocution, falling down shafts, black damp, white damp, falling timbers, rubbing ribs of coal, marsh gas, dust explosions, windy shots, shots, powder explosions, coupling cars, falling from tail chains, and in many other ways, both accidentally and through negligence, all of which happened prior to 1919 and will continue to happen; that owing to the peculiar nature of the method of coal mining in Indiana, said business was and will continue to be more hazardous and the accidents therein have and will continue to occur in more varied ways than in any other business and that practically all other businesses and industries in Indiana except operators of coal mines were accepting the provisions of the Workmen's Compensation Law and were paying compensations for injuries, and that the coal mining industry was the only industry in Indiana refusing to avail itself of the provisions of the Workmen's Compensation Law; that the only other business not operating under the provisions of said Act were railroads, which at the time were under a Federal Compensation Law. (Transcript, page 51.)



That Section 18 as amended does not violate either of the provisions of the Indiana Constitution relied upon by plaintiff, because the classification fixed by said Act is just and reasonable and founded upon conditions and facts justifying the classification. (Transcript, pages 51 and 52.)

The evidence applicable to the several questions involved is discussed in detail in appellant's "Brief of Argument."

#### SPECIFICATION OF ERRORS RELIED UPON.

The Court below erred:

First. In not decreeing Section 18 of the Workmen's Compensation Law as amended to be unconstitutional and void in that the classification attempted in said amendatory act is arbitrary and discriminatory and not based upon any just or reasonable grounds, and in that the General Assembly of the State of Indiana passed said law arbitrarily and without any fair reason, making the same compulsory and mandatory as to persons, partnerships and corporations engaged in the business of mining coal, including plaintiff, and voluntary and permissive as to all other businesses except railroad employees engaged in train service, domestic employees and agricultural servants, to which the act does not apply.

Second. In not decreeing that said Section 18 as amended deprives plaintiff of its property without due process of law, and denies to the plaintiff the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, because said law is not equal and uniform, but selects the coal mining business and imposes upon it onerous burdens without imposing like bur-

dens upon persons engaged in similar and equally hazardous business.

Third. That said Section 18 as amended is unconstitutional and void because it is an unwarranted abridgment of rights and privileges guaranteed to plaintiff by the Fourteenth Amendment to the Constitution of the United States, in that it is arbitrarily and unjustly discriminatory, is partial, unreasonable, oppressive and unequal.

Fourth. In dismissing the plaintiff's bill of complaint.

Fifth. In not decreeing that said Section 18 as amended granted to citizens and classes of citizens privileges and immunities which, upon the same terms, did not equally belong to all citizens, in violation of Section 23 of Article I of the Constitution of Indiana, in that the classification made in said Act as to coal mining companies is arbitrary and unjust.

Sixth. In not decreeing said Section 18 as amended to be violative of Section 21 of Article I of the Indiana Constitution, providing that no man's property shall be taken by law without just compensation, because the private property of plaintiff would be taken by awards of the industrial board without reference to the question of negligence, for the public purpose of protecting the State of Indiana, and without compensation to plaintiff.

## BRIEF OF ARGUMENT.

## POINTS AND AUTHORITIES.

A. Plaintiff at the outset of this controversy, so that there may be no misapprehension as to its position, states the following propositions:

1. The mining of coal is a hazardous occupation. The General Assembly of Indiana has the right and power to pass reasonable laws looking toward the safety of the employees therein.

Such laws, when enacted, are not open to the objection that they violate either the State or the Federal Constitution; provided that if a classification is made therein, it rests upon some reasonable basis.

*Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531;

*St. Louis Consolidated Coal Co. v. Illinois*, 185 U. S. 203;

*Barrett v. State*, 172 Ind. 169, 175 Ind. 112, 229 U. S. 27;

*Chandler Coal Co. v. Sams*, 170 Ind. 623.

2. That no person has any property right or vested interest in any rule of the common law; that the law, itself, as a rule of conduct, may be changed at the will of the General Assembly unless its action is restricted by constitutional limitations.

*Mondou v. New York, etc., Co.*, 223 U. S. 1 (2d Employers' Liability Cases) and numerous authorities there cited;

*Mountain Timber Co. v. Washington*, 243 U. S. 219;

*Middleton v. Texas Power & Light Co.*, 249 U. S. 152;

*Arizona Copper Co. v. Hammer*, 39 Sup. Ct. Rep. 553, 555, and numerous cases there cited.

3. That in pursuance of the proposition announced in subdivision two, *supra*, it is within the constitutional authority of a State legislature to enact employers' liability acts, changing the common law defenses of the employer, and that such acts may be made applicable to railroads alone, because of the inherent danger of their business.

*Pittsburgh, etc., R. R. Co. v. Montgomery*, 152 Ind. 1;

*Bedford Quarries Co. v. Bough*, 168 Ind. 671 (holding, however, that the classification made in the Indiana Employers' Liability Act rendered it invalid);

*Mo. Ry. Co. v. Mackey*, 127 U. S. 205;

*Tullis v. L. E. & W. Ry. Co.*, 175 U. S. 348.

4. Many states have passed workmen's compensation acts, which have been held to be valid against attacks predicated upon the invalidity of such laws under the State and Federal Constitutions, but these laws have been, without exception, based upon a just and reasonable classification.

We append to this brief a list of cases showing the character of the laws involved—that is, whether permissive or compulsory—the persons to whom they apply, including any classes of employers or employees exempted from their provisions, the grounds upon which these laws are attacked; and whether the laws were sustained, or held to be invalid.

This list includes a major portion of the adjudicated

cases, on the question of the validity of workmen's compensation laws.

5. The question to be considered here is whether the legislature may pass a general compensation law, applicable to all employers and employees within the state, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service to which it does not apply at all.

We insist that such a classification rests upon no sound, or just basis, and is violative of the State and Federal Constitutions, in the several respects above pointed out, which we desire to consider separately.

B. Section 18 of the Workmen's Compensation Act of Indiana, as amended in 1919, violates the due process of law and equal protection of the law clauses of the Federal Constitution.

1. A private corporation is protected by the due process of law and equal protection of the law clauses of the Fourteenth Amendment.

*Corington, etc., Co. v. Sandford*, 164 U. S. 578;

*Southern Railroad Co. v. Greene*, 216 U. S. 400;

*Smyth v. Ames*, 169 U. S. 466;

*Western, etc., Assn. v. Greenburg*, 204 U. S. 359.

2. In order to sustain a classification for legislative purposes, it is necessary:

a. That the reason for the classification inhere in the subject matter.

b. That the classification rest on some basis which is natural and substantial.

c. That the classification treat all brought under its influence alike under the same conditions.

d. That it embrace all within the class to which it is naturally related.

*Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, 107, 112;

*Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 560; 564;

*Bedford Quarries Co. v. Bough*, 168 Ind. 671, and numerous cases there cited;

*Cleveland, Cincinnati, etc., Co. v. Schuler*, 182 Ind. 57;

*Sperry & Hutchinson Co. v. State*, 122 N. E. (Ind. Sup.) 584.

3. If the Act is unconstitutional as to employees it is unconstitutional as to employers.

*Mountain Timber Co. v. Washington*, 243 U. S. 219.

4. The Employers' Liability Acts were mandatory as to one highly hazardous employment, viz., railroads, and did not affect other employments at all. Here the act is mandatory as to coal mining companies and permissive as to all others, except as to railroad employees engaged in train service, domestic servants, and agricultural employments, to which it does not apply.

In the first instance the Legislature concluded that it was advisable to apply the law to one particular branch of business only; the *Workmen's Compensation Law* recognizes its applicability to all businesses, but compels only one particular business to come under it. The classification is unsound, unjust and discriminatory. Being applicable to all businesses no reason appears why it should not be mandatory as to all, or permissive as to all.

C. Section 18 of the Workmen's Compensation Law as amended is violative of Section 23 of the Indiana Bill of Rights, prohibiting the General Assembly from granting privileges or immunities to any citizen or class of citizens which upon the same terms does not apply equally to all citizens.

1. A corporation is within the meaning of this provision of the Indiana Constitution as construed by the Supreme Court of that State.

*Street v. Varney Electrical Supply Co.*, 160 Ind. 338;

*Inland Steel Co. v. Yedinak*, 172 Ind. 423, 439.

2. The above referred to section of the Indiana Constitution renders a law invalid if an unreasonable and arbitrary classification has been made.

*Street v. Varney Electrical Supply Co.*, 160 Ind. 338;

*Hirth-Krause Co. v. Cohen*, 177 Ind. 1, 10.

3. The Employers' Liability Acts of Indiana have been construed by the Supreme Court of Indiana as applicable only to the persons engaged in the hazardous business of operating trains, and it has been held that to apply such statutes to employees engaged in a non-hazardous business would render them invalid under Section 23, Article I of the Indiana Constitution.

*Indianapolis Traction & Terminal Co. v. Kinney*, 171 Ind. 612, 617;

*Cleveland, etc., R. R. Co. v. Foland*, 174 Ind. 411;

*Ritchey v. Cleveland, etc., R. R. Co.*, 176 Ind. 542,  
at 558.

D. Said Section 18 as amended is violative of Section 21 of the Indiana Bill of Rights, providing that no man's property shall be taken without just compensation.

1. Here the law provides that coal mining companies are required to pay for injuries sustained by their employees without negligence, while all other private business employers in Indiana may elect not to do so. This amounts to the taking of the property of coal mining companies without compensation for a public purpose, viz., the protection of employees of coal mines against industrial injuries occasioned without negligence.



## ARGUMENT.

### FACTS SHOWN BY THE EVIDENCE.

It is the contention of the plaintiffs that they have shown by the evidence adduced in these causes that Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana for the year 1919, rests upon no reasonable or sound basis of classification, but on the contrary, that compelling coal mining companies to operate under the law and permitting all other business corporations to reject its provisions is a discriminatory classification, founded on no difference in the businesses.

That Section 18 as amended is invalid, appears clearly, we think, from a consideration of the several suggested bases of fact urged in support of the law.

We desire to consider these several suggestions separately, and, in addition, to show that there is no other basis of fact sufficient to sustain the enactment.

### NUMBER OF WORKMEN AFFECTED.

The evidence of Samuel R. Artman (Transcript, page 95) shows that out of seventeen accidents occurring to persons engaged in industrial occupations in this state, one is to a coal miner. This means that Section 18 as amended applies to only six per cent. of the industrial accidents in Indiana, leaving the other ninety-four per cent. of these accidents in the situation that the employer may, if he elects, reject the Compensation Act, with a like privilege to the employe, and in either of such events the employer is only liable in the event it has been guilty of negligence. It therefore can not be successfully urged, as it was in the Compensation Act, applying to the territory of Alaska (*Johnson v.*

*Kennecott Copper Co.*, 248 Fed. 407, 413), that the law is valid because it covers substantially all the persons engaged in hazardous industrial pursuits in Indiana.

Coal mining is not the largest industry in Indiana. The evidence in this case discloses that there are substantially sixty thousand men engaged in the manufacture of iron and steel and allied industries, more than twice as many as are employed in coal mining. (Transcript, page 69.)

In the business of auto manufacturing and repairing, twenty-nine thousand three hundred sixty-six men are engaged. This also exceeds the number of employes in the coal mining business. (Transcript, page 69.)

There are at least four other general employments, with more than five thousand men engaged in each, viz., furniture manufacturing and repairing, glass manufacturing, oil refining and general contractors. (Transcript, page 69.)

#### DISMEMBERMENTS.

There is possibly no class of industrial injuries resulting in partial or permanent disability to the extent that is caused by dismemberments. It is impossible for a man who has an arm or leg or part of a hand severed to be as efficient from an industrial standpoint as he was before such accident occurred.

It is a highly significant fact that *coal mining stands fifth in the percentage of dismemberments to the number of employes*. The following table shows the total number of employes in the five businesses referred to, the number of dismemberments, and the percentages:

*Furniture Manufacturing and Repairing.*

No. of Employees.	Dismemberments.	Per Cent.
11,218	64	.57

*General Contractors.*

5,357	14	.261
-------	----	------

*Auto Manufacturing and Repairs.*

29,366	66	.224
--------	----	------

*Iron and Steel.*

27,720	52	.187
--------	----	------

*Coal Mining.*

26,294	32	.121
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(Transcript, pages 69 and 71 to 74.)

## TOTAL NUMBER OF ACCIDENTS.

When the ratio of total accidents to number of employes is considered, coal mining stands *twelfth* on the list, which is as follows:

For the year ending October 30, 1918.

Employment.	Employes. No.	Accidents. No. of	Cent. Per
General contractors -----	5,357	1,217	22.7
Transfer, storage and warehouse -----	604	97	16
Gas manufacturing -----	2,508	457	18.2
Oil refining -----	5,129	591	11.5
Stone quarrying and cut- ting -----	2,315	263	11.3

Glass manufacturing ----	8,377	949	11.3
Iron and steel -----	60,547	6,097	10 plus
Veneer manufacturing --	1,219	126	9.8
Cement manufacturing --	2,037	203	9.9
Furniture manufacturing and repairs -----	11,218	1,050	9.4
Explosives -----	817	73	8.9
Coal mining -----	26,294	2,162	8.2

(Transcript, page 69.)

These figures demonstrate that, even conceding that hazard is the proper test to determine whether a fair and reasonable classification has been made (which we do not admit), that the risks ordinarily incident to other occupations are much greater than those prevailing in the mining of coal.

Note.—Included in the above figures in the number of employees are only those employees where the employer employs five or more men, while the number of accidents is obtained from the reports of accidents made by all employers, whether employing more or less than five. (Transcript, page 69.)

Outside of the transfer, storage and warehouse business, the other employments were conducted by employers having more than five men in their employment, and the inclusion in the accidents to employees in establishments where less than five men were employed, whereas, in the number of men actually employed, the reports do not include establishments where less than five men are employed, does not substantially affect the percentage of injuries in the above figures. (Transcript, page 87.) The figures as to the transfer, storage and warehouse business were corrected so as to include

therein only the accidents which happened to employers of persons having five or more employees. (Transcript, pages 70 and 71.)

#### DEATH RATE.

The death rate in coal mining in Indiana during the year 1918 was *abnormal*.

During 1917, there were but sixty-one fatalities in coal mining in Indiana, although twenty-three thousand nine hundred forty persons were employed, which is but 2.75 killed per thousand.

See Indiana Year Book 1917, page 412. (Transcript, page 94.)

Indiana Year Book 1918, page 477.

It also appears from the same source that the following number of persons per thousand have been killed from 1899 to date in the coal mining industry in Indiana, viz.:

Year.	No. Employed.	Fatalities.	Killed per Thousand.
1899	7,366	15	2.04
1900	8,858	18	2.03
1901	10,296	24	2.33
1902	13,139	24	1.83
1903	15,128	15	.99
1904	17,838	34	1.91
1905	17,856	47	2.63
1906	19,562	31	1.60
1907	19,009	53	2.79
1908	19,092	45	2.36
1909	18,908	50	2.64
1910	21,171	51	2.41

1911	20,778	33	1.60
1912	21,230	37	1.74
1913	21,683	59	2.72
1914	22,110	49	2.21
1915	20,702	54	2.60
1916	21,300	48	2.25
1917	23,940	66	2.75
1918	27,932	114	4.08
		(should be 112)	(should be 404 plus)

(Transcript, page 94.)

(Evidence of Carry Littlejohn, Transcript, pages 103 and 104).

The usual death rate among miners in Indiana has never exceeded 2.79 per thousand in twenty years except during 1918. Defendants' own witness, Carry Littlejohn, assistant mine inspector for Indiana, says that this experience in 1918 is abnormal, and accounts for it in three ways:

1. Employment of inexperienced and older men, on account of war conditions.
2. Rush of work due to war.
3. Inability to get proper materials and supplies.

*This undisputed evidence shows that this unusual death rate can not continue. Indeed, the average death rate in coal mining in Indiana is more than one man per thousand less than the average death rate in coal mining in the United States, showing a more careful operation in this state. Even with the unusual conditions in 1918, Indiana does not exceed the general average in death losses in coal mining in*

the United States in normal years. (Transcript, page 103.)

In 1918, with 5,357 employes in General Contracting, the deaths were 21 showing a loss of 3.92 men per thousand; *far exceeding* the normal death rate in coal mining, and lacking but .12 per cent. of equaling last year's death rate in coal mining, certainly not an outstanding difference. (Transcript, pages 69 and 96.)

#### CHARACTER OF INJURIES.

From the reports made to the State Mine Inspector for the year 1918 (Year Book of 1918, Transcript, page 90) it appears that there was but one permanent injury in the coal mining business in Indiana during that year. Of the accidents reported, totaling 1,591, only 391 were serious and 1,085 are reported as slight.

This evidence is clear and conclusive and establishes that more than sixty per cent. of the injuries sustained by employes engaged in the business of mining coal are slight in character and, of course, that the number of serious injuries is relatively small.

The principal reason for the small number of serious accidents is found in the fact that the State of Indiana has very stringent laws governing the operations of coal mines. For instance, the law which requires the operator of the mine to force one hundred cubic feet of air per minute for each and every person employed in the mine and three hundred cubic feet of air per minute for each mule, horse or other animal used in the mine through the entire workings of the mine, is sufficient to and does practically eliminate danger from either white or black damp. The law also provides that "every place where fire damp is known, or sup-

posed to exist, shall be carefully examined with a safety lamp by a competent fire boss immediately before each shift." This same pure air law in connection with the law which requires the operator to keep the traveling ways and air ways sprinkled is sufficient to eliminate the danger resulting from gas or dust explosions. In other words, these two sections of the law, if observed, prevent the possibility of danger either from damp or from gas or dust explosions.

There is also a well understood rule or custom of the mine which governs the handling of powder and which, if observed, almost eliminates the possibility of powder explosions.

There is also a statute which makes it the duty of the mine boss to "visit and examine every working place in the mine, at least every alternate date while the miners of such places are, or should be, at work, and shall examine and see that each and every working place is properly secured by timbering and *that the safety of the mine is assured*. He shall see that a sufficient supply of timbers are also on hand at the miners' working place. He shall also see that all loose coal, slate and rock overhead wherein miners have to travel to and from their work *are taken down or carefully secured*. Wherever such mine boss shall have an unsafe place reported to him he shall order and direct that the same be placed in a *safe condition*."

In view of the fact that having rejected the Compensation Law the defenses of contributory negligence, assumption of risk, and the fellow servant doctrine are not available to the coal operator it must appear from the sections of law heretofore referred to that there is little or no possibility of an accident happening in the coal mine as a result



of damps, explosions, or fall of slate, without liability on the part of the employer. We refer especially to Sections 8579 and 8580 of Burns' Revised Statutes of Indiana, 1914. There are many other sections governing the operation of a mine, but the two sections especially referred to are amply sufficient to show that under the common law rule that the employer is obliged to provide a safe place in which the employee is to perform his labors, there is little possibility of an accident without a clean cut statutory liability. We call especial attention to these facts because the real danger in a coal mine should be by the observance of statutory law reduced to the minimum, while in the factory and the steel and iron mills the dangers are of such a nature that it is impractical to eliminate them. That is to say, the buzz saw and the many other dangers in these other industries can not even by statutory enactment be guarded against.

Appellant introduced in evidence the reports made to the Industrial Board of accidents by certain iron and steel mills, wood manufacturers, stone contractors, and manufacturers of explosives. A list of the more serious injuries reported by these companies is included in the Transcript, pages 105 to 153. We call especial attention to the character of these injuries, showing conclusively many very severe cases of burning, bruising, fractures and amputations. The only evidence as to the character of injuries in the coal mining business is the testimony of the former secretary of the Indiana Industrial Board that the injuries to persons engaged in the coal mining business as to disfigurement or marring the appearance of the employees are very serious; that the reports of employees in the coal mining business show a greater per cent of disfigurement and marring of the face than any other industry in the state. (Transcript, page 71.)

Mr. Carry Littlejohn, Deputy Mine Inspector of Indiana, testified as to working conditions in the mine, black damp and coal damp, but gave no evidence as to the character of injuries generally to miners.

NUMBER OF DEATHS DOES NOT DETERMINE HAZARD OF  
OCCUPATION FROM COMPENSATION STANDPOINT.

The real purpose of a compensation law is that persons who are injured and the dependents of those who are dead shall receive reasonable compensation, without respect to the question of the negligence of the employer, and that thus the risk of industrial accidents shall be borne by the business instead of the employer or the employe, as the case may be, or by society.

While it is, of course, unfortunate that any person should be killed in the pursuit of an industrial occupation, when death results, the industrial and economic situation is less serious than it is when the injured person is permanently disabled. In case of permanent injury, it is necessary that society care not only for the dependents of the injured men, if he has any, but also for himself, while if death results, it is necessary only that his dependents receive reasonable compensation and in many cases there are no such dependents.

This difference is strikingly recognized by the Compensation Law of Indiana. In the event of a worker's death his dependents receive 55 per cent. of his average weekly wages for a period of three hundred weeks, whereas in cases of permanent disability or of permanent partial impairment, the same per cent. of payments of compensation may extend for a period of five hundred weeks.

Section 37 of the Workmen's Compensation Law as amended in 1919, Acts 1919, page 164, regulates the compensation payable in the event of death. Section 31, as amended in 1919, Acts 1919, page 162, fixes the compensation in the event of permanent disability. The latter section provides for payments for five hundred weeks in the following class of cases:

- A. For injuries resulting in total permanent disabilities.
- B. For the loss of both hands.
- C. For the loss of both feet.
- D. For the loss of the sight of both eyes.
- E. For permanent partial impairments, compensation proportionate to the degree of impairment, not exceeding five hundred weeks.
- F. Injuries resulting in temporary total disability.

As stated above, in the event of death the compensation is limited to a period of three hundred weeks.

The law thus recognizes what is the actual fact, that, economically speaking, dismemberment, loss of sight, permanent disability and even permanent partial impairment are more serious and require a greater degree of compensation than death itself.

We also suggest the proposition that it is no more important to the dependents of a deceased coal miner that compensation should be paid to them than it is to the dependents of a man engaged in the general contracting business; that the whole theory of the law is the payment of compensation and that if 3.92 men out of each thousand engaged in general contracting are killed while in pursuit of their occupation, there is the same reason for compensation

being paid to their dependents as there is for requiring compensation to be paid to the dependents of the 4.04 out of each thousand killed while engaged in the business of mining coal. The difference is a very small one. Indeed, in normal years in the coal business the death rate does not exceed 2.79 men per thousand, and has not for a period of more than twenty years. There is, therefore, no real difference as between these two occupations.

The evidence further discloses that forty-six men were killed in the iron and steel industry in Indiana in the year 1918, and no just and fair distinction can be made as between their dependents and the dependents of the persons engaged in mining coal.

#### WAGE CONDITIONS.

This law certainly can not be sustained upon the theory that the general conditions as to wages, etc., in the coal mining business are less favorable than in other industries.

Mr. Phil Penna, at one time President of the Miners' National Union, testified in this respect, and his evidence is not disputed, that miners have been able to earn during the last year on a very conservative basis, from \$7.50 to \$8.00 a day, theoretically of eight hours, but practically of six hours; that even the men who work above ground receive from \$4.65 a day upward for their work. He added that thousands of miners in Indiana had paid income taxes on incomes in excess of \$2,500 for the year 1918. (Transcript, page 84.)

These facts demonstrate that the coal mining industry is the highest paid industrial work in Indiana.

Furthermore, it appears by a stipulation that the coal miners employ lawyers to look after all of the legal business

of their members, including the prosecution of personal injury suits. For this purpose each miner pays the sum of ten cents a month to the legal department. In the event of injury or death, any suit for damages for such injury is prosecuted by the attorneys employed by the union, at no expense whatever to the injured man or his dependents except the regular payments of ten cents per month, and, if a recovery is had, the entire sum of money recovered is paid over without abatement to those entitled thereto. (Transcript, pages 86 and 87.)

In other industries in Indiana, where the employer has rejected the act, the industrial worker is required to pay his own attorneys. This, of course, in most instances he must do on a contingent fee basis, where sums varying from twenty-five to fifty per cent. of the amount recovered are charged for this service and the net result to the employe correspondingly reduced.

This condition, therefore, shows a difference between the coal mining industry and other industrial occupations in Indiana, but a difference which is wholly in favor of coal mining and therefore forms no just basis for the passage of a compensation law made compulsory as to this business alone.

#### THE QUESTION PRESENTED.

Appellant challenges the constitutional validity of Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana for the year 1919.

This section as amended reads as follows:

"The provisions of this Act, except Sections 3, 4, 10, 11 and 12, shall apply to the State, to all the political divisions thereof, to all municipal corpora-

tions within the State, to persons, partnerships and corporations engaged in mining coal, and to the employees thereof."

The Indiana Workmen's Compensation Act was enacted in the year 1915. (Chapter 106, Acts 1915, pp. 392-417.)

The General Assembly of 1917 amended Sections 2, 28, 59, 60 and 61.

Until the passage of House Bill 110, by the General Assembly of 1919, the Workmen's Compensation Act was permissive as to all employers and employees, except as hereafter noted.

The provisions for rejecting the act are found, primarily, in Section 3, which reads as follows:

"Sec. 3. Either an employer or an employee, who has excepted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the industrial board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him: and shall be given by the employee by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the industrial board."

Section 4 provides, in substance, that contracts made before the Act takes effect, shall be presumed to continue, and that every contract of service made subsequent to the taking effect of the Act shall be presumed to have been made, subject to the provisions of the Act, unless notice is given.

Sections 10, 11 and 12 regulate the liability of employers, where such employers, or their employees, have elected not to operate under the Workmen's Compensation Act.

In the event the employer makes such an election, he is deprived of the following common law defenses:

- (a) That the employee was negligent.
- (b) That the injury was caused by the negligence of a fellow employee.
- (c) That the employee had assumed the risk of the injury.

If the employee elects to reject the act the employer is entitled to defend any action, and to avail himself of the common law defenses of contributory negligence, assumption of risk, and negligence of a fellow servant.

If both employer and employee reject the Act, the liability of the employer is to be determined the same as though he, alone, had rejected the terms of the Act.

*Under Section 18, as amended by House Bill 110, all coal mining companies, including this Plaintiff, are required to operate under the provisions of the Workmen's Compensation Act, which is made mandatory as to them, and as to the State and its political subdivisions and municipal corporations.*

*As to all other employers the Act remains a permissive one, and they may elect not to operate under its provisions, except that railroad employees engaged in train service do not come within the provisions of the law.*

Appellant challenges the validity of Section 18 of this law, as amended, but is raising no question as to the remaining part of the Act.

While the Supreme Court of Indiana has not passed upon the constitutionality of the Workmen's Compensation Act of this State, it is well settled that a fair and just compensation law, which is not discriminatory, is not objectionable to the Fourteenth Amendment to the Constitution of the United States, or, indeed, to any other provisions of the Federal Constitution.

*Mountain Timber Co. v. Washington*, 243 U. S. 219;

*New York Central R. R. Co. v. White*, 243 U. S. 188;

*Arizona Copper Co. v. Hammer*, 39 Sup. Ct. Rep. 553 and cases cited.

The grounds of attack upon Section 18, as amended, are as follows:

(1) That it violates the due process of law clause of the Fourteenth Amendment of the Constitution of the United States.

(2) That it violates the equal protection of the laws clause of the Fourteenth Amendment of the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows:



"The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

Sec. 68, Burns' R. S. 1914.

(4) That it violates Section 21 of the Indiana Bill of Rights, reading as follows:

"No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."

Sec. 66, Burns' R. S. 1914.

While admitting that it is within the constitutional authority of a state legislature to pass a workmen's compensation act, in which a fair and reasonable classification is made, the question here to be considered is whether the legislature may enact a general compensation law, applicable to all employers and employees within the state, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service, to whom it does not apply at all.

We insist that such a classification rests upon no sound or just basis, and is violative of both the State and Federal Constitutions.

Appellant as a private corporation is entitled to avail itself of the due process of law and equal protection of the law clauses of the Fourteenth Amendment.

It is undoubtedly true that legislatures may make reasonable classifications, but in order that a classification when made shall be valid, it is necessary that it rest on some basis which is *natural and substantial*, that the "rea-

*son for the classification inhere in the subject matter", and that the classification treat all brought under its influence alike under the same conditions.*

In *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, the Supreme Court of the United States held a law of Kansas, general in its terms, but which really applied to the Kansas City Stock Yards only and which limited the charges to be made for its services to be invalid, as denying the equal protection of the laws in violation of the Fourteenth Amendment. The Court quotes with approval the following language from *Bell's Gap Railroad v. Pennsylvania*, 134 U. S. 232, 237:—

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay

down any general rule or definition on the subject that would include all cases."

The Illinois General Assembly in 1893 passed an Anti-Trust Law which applied to all trusts and combinations, except that by Section 9 thereof, it was provided:—

"Sec. 9. The provisions of this Act shall not apply to agricultural products or livestock while in the hands of the producer or raiser—"

This Court (*Connelly v. Union Sewer Pipe Co.*, 184 U. S. 540), in holding this statute invalid, said in part:—

"The question of constitutional law to which we have referred cannot be disposed of by saying that the statute in question may be referred to what are called the police powers of the State, which, as often stated by this court, were not included in the grants of power to the general government, and therefore were reserved to the States when the Constitution was ordained. But as the Constitution of the United States is the supreme law of the land, anything in the Constitution or statutes of the States to the contrary notwithstanding, a statute of a State, even when avowedly enacted in the exercise of its police powers, must yield to that law. No right granted or secured by the Constitution of the United States can be impaired or destroyed by a State enactment, whatever may be the source from which the power to pass such enactment may have been derived. 'The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is the supreme law.' The State has undoubtedly the power, by appropriate legislation, to protect the public morals, the public health and the public safety, but if, by their necessary operation, its regulations looking to either of those ends amount to a denial to persons within its jurisdiction of the equal protection of the laws, they must be

deemed unconstitutional and void. *Gibbons v. Ogden*, 9 Wheat. 1, 210; *Sinnot v. Davenport*, 22 How. 227, 243; *Missouri, Kansas & Texas Railway v. Haber*, 169 U. S. 613, 626.

"What may be regarded as a denial of the equal protection of the laws is a question not always easily determined, as the decisions of this court and of the highest courts of the States will show. It is sometimes difficult to show that a State enactment, having its source in a power not controverted, infringes rights protected by the national Constitution. No rule can be formulated that will cover every case. But upon this general question we have said that the guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.' *Missouri v. Lewis*, 101 U. S. 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no State "shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be im-

posed upon one than such as is prescribed to all for like offenses.' *Barbier v. Connolly*, 113 U. S. 27, 31. This language was cited with approval in *Yick Wo v. Hopkins*, 118 U. S. 356, 369, in which it was also said that 'the equal protection of the laws is a pledge of the protection of equal laws.' In *Hayes v. Missouri*, 120 U. S. 68, 71, we said that the Fourteenth Amendment required that all persons subject to legislation limited as to the objects to which it is directed, or by the territory within which it is to operate, 'shall be treated alike, under like circumstances and considerations, both in the privileges conferred, and in the limitations imposed.' 'Due process of law and the equal protection of the laws,' this court has said, 'are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government.' *Duncan v. Missouri*, 152 U. S. 377, 382. Many other cases in this court are to the like effect.

"These principles, applied to the case before us, condemn the statute of Illinois. We have seen that under that statute *all* except producers of agricultural commodities and raisers of live stock, who combine their capital, skill or acts for any of the purposes named in the act, may be punished as criminals, while agriculturists and livestock raisers, in respect of their products or live stock in hand, are exempted from the operation of the statute, and may combine and do that which, if done by others, would be a crime against the State. The statute so provides, notwithstanding persons engaged in trade or in the sale of merchandise and commodities, within the limits of a State, and agriculturists and raisers of livestock, are all in the same general class, that is, they are all alike engaged in domestic trade, which is, of right open to all, subjects to such regulations, applicable alike to all in like conditions, as the State may legally prescribe.

"The difficulty is not met by saying that, generally speaking, the State when enacting laws may, in its discretion, make a classification of persons,

firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. \* \* \* But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. \* \* \* No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. \* \* \* It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground, some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.' *Gulf, Colorado & Santa Fe Railway v. Ellis*, 165 U. S. 150, 155, 159, 160, 165. These principles were recognized and applied in *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, in which it was unanimously agreed that a statute of Kansas regulating the charges of a particular stock yards company in the State, but which exempted certain stock yards from its operation, was repugnant to the Fourteenth Amendment in that it denied to that company the equal protection of the laws."

In *Cleveland, etc., Co. v. Schuler*, 182 Ind. 57, the Supreme Court of Indiana had occasion to pass upon the validity of an Act of the Indiana General Assembly requiring railroads to pay any employee in full within 72 hours after he had been discharged, or had voluntarily quit the service. The act was held to be invalid. The Court said:

"It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation."

The appellee in the above case relied upon the case of *Seelyville Coal Co. v. McGlosson*, 166 Ind. 561. (Semi-monthly pay law), but the Supreme Court clearly pointed out the distinction between the two cases as follows:—

"1. It is true, as appellant concedes, that railroads may be placed in a class by themselves for some legislative purposes, but only for such purposes as have to do with duties peculiar to them as carriers or with the dangers peculiar to their operation. The rule is thus stated in *Bedford Quarries Co. v. Bough* (1907), 168 Ind. 671, 674, 14 L. R. A. (N. S.) 418: 'The legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for a classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class; that is, the reason for the classification must inhere in the subject-matter, and rest upon some reason which is natural and substantial, and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all within the class to which it is naturally related. Neither mere isolation nor arbitrary selection is a proper classification.'

"There is nothing in the act under consideration which suggests a valid basis for the classification which it makes.

"2. It is not designed to regulate the business of common carriers nor has it any reference to the

hazards peculiar to the operation of railroads. In brief, no good reason appears for requiring railroads to pay, in accordance with the provisions of this act, those who leave their service, while manufacturing corporations and other employers of labor are excepted from its operation. In the case of *Gulf, etc., R. Co. v. Ellis* (1897), 165 U. S. 150, 17 Sup. Ct. 255, 41 L. ed. 666, the Supreme Court of the United States had under consideration an act passed by the legislature of the State of Texas which provided that if railroad companies, under certain conditions, failed to pay valid claims 'for personal services rendered or labor done,' etc., within thirty days after such claims were duly presented, the claimant, in recovering a judgment thereon, should recover also certain attorney's fees. In holding the act unconstitutional the court, speaking by Mr. Justice Brewer, used the following language, which we deem applicable here: 'It is simply a statute imposing a penalty upon railroad corporations for a failure to pay certain debts. No individuals are thus punished, and no other corporations. The act singles out a certain class of debtors and punishes them when for like delinquencies it punishes no others. They are not treated as other debtors, or equally with other debtors. \* \* \* If it be said that this penalty is cast only upon corporations, that to them special privileges are granted, and therefore upon them special burdens may be imposed, it is a sufficient answer to say that the penalty is not imposed upon all corporations. The burden does not go with the privilege. Only railroads of all corporations are selected to bear this penalty. \* \* \* That such corporations may be classified for some purposes is unquestioned. The business in which they are engaged is of a peculiarly dangerous nature, and the legislature, in the exercise of its police powers, may justly require many things to be done by them to secure life and property. \* \* \* But a mere statute to compel the payment of indebtedness does not come within the scope of police regulations. The hazardous business of railroading carries with



it no special necessity for the prompt payment of debts. That is a duty resting upon all debtors, and while in certain cases there may be a peculiar obligation which may be enforced by penalties, yet nothing of that kind springs from the mere work of railroad transportation.' See, also, *School City of Rushville v. Hayes* (1904), 162 Ind. 193, 203; *Seaboard Air line Railway v. Simon* (1908), 56 Fla. 545, 47 South 1001, 20 L. R. A. (N. S.) 126, 16 Ann. Cas. 1234; *Missouri, etc., R. Co. v. Braddy*, 135 S. W. (Tex. Civ. App.) 1059."

Decisions of the Supreme Court of Indiana and of the Supreme Court of the United States sustaining Employers' Liability Statutes applicable to railroads only are not decisive of this case for the following reasons:—

(a) Railroads have long been held to be so necessarily and inherently dangerous in their operation to the life and limb of employees that legislation respecting them alone and separating them from all other kinds of business has been held not to be an unconstitutional discrimination, "because no other business is beset with so many and severe dangers as those encountered by employees in preparing for, and during, the movement and operation of railroad trains."

*Indianapolis Traction, etc., Co. v. Kinney*, 171 Ind. 612, 616.

(b) The Employers' Liability Acts were mandatory as to the one most hazardous employment, viz.: railroads, and did not affect other employments at all. Here the act is mandatory as to coal mining companies and permissive as to all others, except as to railroad employees engaged in train service, to which it does not apply.

In the first instance, the legislature has concluded that it was advisable to apply the law to one particular branch of business only; this law recognizes its *applicability* to all businesses but *compels* only one particular business to come under it. The classification is, therefore, not merely unsound and unjust, but it is discriminatory.

(c) Section 2 of the Workmen's Compensation Act, as amended in 1917 (Acts 1917, p. 673) excludes from the operation of the law "railroad employees engaged in train service." *Thus this law wholly excludes from its operation the hazardous part of the most dangerous business, is permissive as to the non-hazardous part of the same business (railroading), and compels owners of coal mines to operate under its provisions.* These considerations are not urged in an attempt to show that Section 2, as amended, is invalid, but in order to demonstrate the kind of a classification which the law makes, which classification has no sound basis upon which to rest, and thus show that Section 18, as amended, is invalid.

(4) The cases upholding Workmen's Compensation Acts were decided with reference to statutes which, in a general way, made one or more of the following classifications:—

- a. Including all hazardous employments.
- b. Including a large number of fairly selected extra-hazardous employments.
- c. Including all employers and employees.
- d. Including all employers and employees, except domestics, farm laborers, casuals, etc.
- e. Including all employers, except those having less than five persons regularly employed.

- f. Including all employees, except those for whom special provision is made by the Federal law.

We have failed to find any law which attempts to make a Workmen's Compensation Act permissive as to all employments, except one, and mandatory as to it. The unfairness of such a classification is emphasized when coal mining is selected as the one business as to which the law is made compulsory, and employer and employees in blasting, quarrying, iron and steel manufacturing, and others are permitted to elect whether or not they will come under its provisions, and employees of railroads in train service are excluded. Section 18, as amended, is violative of Section 23 of the Indiana Bill of Rights, which reads as follows:—

"The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

Section 68, Burns' R. S. 1914.

A corporation is within the meaning of this section of the Indiana Constitution, as construed by the Supreme Court of that State.

*Street v. Varney Electrical Supply Company*, 160 Ind. 338;

*Inland Steel Co. v. Yedinak*, 172 Ind. 423, 439.

In *Inland Steel Co. v. Yedinak*, *supra*, the objection that the statute violated Article 1, Section 23, of the Indiana Constitution was passed upon, but the statute was upheld, because it forbade the employment of certain children in any manufacturing or mercantile establishment, mine,

quarry, laundry, renovating works, bakery or printing office. The Court said:—

“The classification is natural, just and reasonable, and no substantial objection to its validity on this ground has been advanced.”

The above quoted section of the Indiana Constitution renders a law invalid if an unreasonable and arbitrary classification is made, and has been held to be, so far as the subject of classification is concerned, substantially the same as the privileges and immunities clause of the Fourteenth Amendment, except as hereafter noted.

*Street v. Varney Electrical Supply Company,*  
*supra;*

*Hirth-Krause Co. v. Cohen*, 177 Ind. 1, 10.

It has been urged in certain cases in this Court that laws abolishing the common law fellow servant rule, as to all employees of railroad companies, were arbitrary and a denial of the equal protection of the laws, and the due process of law, unless such laws were limited, in their effect, to employees imperiled by the hazardous business of operating railroad trains, or engines.

This contention has been denied, so far as the Fourteenth Amendment to the Constitution of the United States is concerned.

*Mobile, etc., R. R. Co. v. Turnipseed*, 219 U. S.  
35-40;

*Louisville & Nashville R. R. Co. v. Melton*, 218  
U. S. 36.

And, insofar as the following Indiana cases determine the effect of such legislation with respect to its invalidity under the Fourteenth Amendment, they have been disapproved by this court.

*Indianapolis, etc., Co. v. Kinney*, 171 Ind. 612;  
*Cleveland, etc., R. R. Co. v. Foland*, 174 Ind. 411.

However, it has been repeatedly held by the Supreme Court of Indiana, under the Employers' Liability Acts, that to extend the benefit of the statute to all employees of the railroad company would render it invalid under Section 23, Article I, of the Indiana Constitution.

*Indianapolis T. & T. Co. v. Kinney*, 171 Ind. 612-617;  
*Cleveland, etc., R. R. Co. v. Foland*, 174 Ind. 411;  
*Richey v. Cleveland, etc., R. R. Co.*, 176 Ind. 542,  
 at p. 558.

The case of *Richey v. Cleveland, etc., Ry. Co.*, *supra*, was decided after the two cases above referred to in this Court, viz.: *Mobile, etc., R. R. Co. v. Turnipseed*, and *Louisville & Nashville R. R. Co. v. Melton*; and, notwithstanding the decision of this court as to the interpretation of the Fourteenth Amendment on the question of classification, the Supreme Court of Indiana stands by its rule that the inclusion of employees not engaged in a hazardous part of the railroad business, the terms of the Employers' Liability Act of Indiana would render it repugnant to Section 23 of Article I, of the Indiana Constitution.

Thus demonstrating the broader construction given to

this clause of the Indiana Constitution, than that given by this court to a similar clause of the Fourteenth Amendment.

The language of the Employers' Liability Act is, "That every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injuries suffered *by any employee* while in its service."

The Workmen's Compensation act provides, in Section 2, "from and after the taking effect of this Act, *every employer and every employee*, except as herein stated, shall be presumed to have accepted the provisions of this Act," etc.

The Supreme Court of Indiana, construed the Employers' Liability Act as applicable only to such employees as were engaged in the hazardous part of the railroad business, but it is impossible so to construe the Workmen's Compensation Act, because, in terms, it applies to every employer and every employee, and this has been the practical interpretation and construction of the law, ever since its enactment.

Therefore, we insist, that inasmuch as the Compensation Law, by Section 18, as amended, is made compulsory upon "persons, partnerships and corporations engaged in mining coal, and to the employees thereof," it is invalid under the provisions of the State Constitution, because it imposes a liability upon coal mining companies with respect to their employees not engaged in the hazardous part of the business, and as to all other private business enterprises within the state, except railroad employees in train service, which are excluded, it is purely optional.

In the case of *Sperry & Hutchinson Co. v. State of Indiana*, decided very recently by the Supreme Court of Indiana (122 N. E. Rep. 584), the classification of the Trading Stamp Act was held to be invalid under Section 23 of Article I of the Indiana Constitution.

That act made it unlawful for persons and corporations to which it applied to engage in the distribution and redemption of trading stamps, coupons, or like tokens, symbols or devices, without first procuring a license, at a prohibitive cost. But the Act applied only to those corporations which were organized for the purpose of redeeming trading stamps, either in cash, or without articles of merchandise not the product of its own manufacture, and to individuals so engaged; while all other persons or corporations might engage in the business without let or hindrance.

In other words, if a manufacturing corporation redeemed its trading stamps out of merchandise manufactured by itself, there was no liability.

The court rightly condemned this classification. Among other things, it said:

"An act of the kind under consideration can be justified only on the theory that the business against which it is directed was of such a nature as to affect and to influence injuriously the public morals and the general welfare of society and that the purpose of passing the act was to shield the public from the evil potentialities of the business. Considering the classification made in the light of the avowed purpose and object of the act, it is difficult to assume a state of facts which would afford a reasonable ground upon which to base a distinction between the classes formed by the act. Let us suppose that two corporations are engaged in the business under discussion, one of which is organized for the purpose of conducting such business and of making the redemption contemplated with money or with articles of merchandise acquired by purchase while the other corporation is organized for the purpose of manufacturing, and it makes the redemption in articles which are the product of its own manufacture. If the supposed business of each be considered from the

standpoint of the effect on the public morals and the general welfare of society, can it be said for any conceivable reason or under any supposable state of facts that the business conducted by the former is more deleterious in its effects on society than that conducted by the latter? The classification adopted must rest on some reason which inheres in the subject-matter with which the legislation deals. The reason must be substantial and not merely artificial. *Bedford Quarries Co. v. Bough*, 168 Ind. 671.

"The court can conceive of no reason upon which the classification adopted in the act can be sustained. Certainly no reason can be suggested resting on any consideration of public morals or general public welfare, and reasons based on any other considerations would be without force."

Applying the ruling of the Supreme Court of Indiana, in the case above cited, to the instant case, it would seem that the classification here made is wholly objectionable under the Indiana Constitution, for the following reasons:

1. Section 18 of the Workmen's Compensation Act, as amended in 1919, requires all employees in the coal mining business to be paid compensation; every person and corporation engaged in the business must operate under the Compensation Act. Whereas, to all other private businesses the Act is permissive only, except that railroad employees, in train service, are wholly excluded from its operation.

2. A carpenter engaged in work above ground, for a coal mining company, a clerical employee in its office, or a driver of its teams, can recover compensation against the company, although there is no negligence, while just across the street another corporation may be engaged in stone quarrying, which is certainly as hazardous as the coal mining business, and if that company has elected to reject



the act, even the employees engaged in the hazardous part of the business can have no recovery, unless the company is guilty of negligence.

In the case of *Mountain Timber Co. v. Washington*, 243 U. S. 219, the Supreme Court of the United States uses the following language:

"While plaintiff in error is an employer, and cannot succeed without showing that its constitutional rights as employer are infringed (*Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576), yet it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the quid pro quo for the burdens imposed upon him, so that if the act is not valid as against employees it is not valid as against employers."

Thus we are entitled to consider not only the unreasonableness and injustice of the classification as to employer, but the unreasonableness and injustice of the classification as to employees as well, and with equal force.

Section 18, as amended, is violative of Section 21 of the Indiana Bill of Rights, reading as follows:

"No man's particular services shall be demanded without compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered."

Sec. 66, Burns' R. S. 1914.

If it can be truthfully said that the injuries resulting from accidents in which there is no negligence on the part of the employer, and consequently no damages recoverable by the injured employee or his dependents, lay a burden on

society generally, the coal industry, by taxation, bears its proportionate part of such burden as to all other industries in the State of Indiana, who do not see fit to voluntarily accept the provisions of the compensation law. In addition, the coal industry must bear its own such burdens alone, because it is, by the Act in controversy, forced to accept the provisions of the Compensation law. In other words, all other industries in the State may reject the Compensation law and leave such burdens as they are not guilty of negligence in producing to be borne by the tax-paying public, of which the coal industry is a part, and the coal industry, in addition to bearing its proportionate part of such burdens, must bear its own burdens alone. This amounts to taking private property for public use without compensation. It is also a taking of property without due process of law, and a denial of the equal protection of the law. It is also an unreasonable, arbitrary and unjust classification. In fact, no reason can be offered for the classification. No industry is more lawful, nor more necessary, nor more beneficial to all the people than the coal industry, and many other industries are equally as hazardous, and some even more hazardous than the coal industry. The employees of no other industry are better paid, nor better organized than the employees of the coal industry. The miners' union of Indiana have their personal injury lawyers employed by the year, and no accident or injury is overlooked, and no fifty per cent. contingent fee contract is entered into by the injured employee or his dependents. There is not the waste that has heretofore been set up as a reason or justification for Compensation laws. These facts are all common knowledge in Indiana, and were all well known to the General

Assembly at the time the Act now under consideration was passed.

In *Lindsley v. Natural Carbonic Gas Company*, 220 U. S. 61, this court in stating the rules by which a classification must be tested, among other things, says:

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time that the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis but is essentially arbitrary.

In that case the averments of the bill shed but little light upon the classification."

But in any event we do not understand the language of this court as meaning that a law will be sustained if from the averments of the bill the evidence in the case and facts "within the range of common knowledge" show that the classification is essentially arbitrary and unjust.

#### IS CLASSIFICATION JUSTIFIED?

Appellees justify the classification on the sole basis of hazard. They allege in their answer first, that the coal industry is the most hazardous industry in the state, and second, that the injuries sustained by the workmen result from more "numerous, diverse and varied" hazards than in any other occupation.

The first alleged justification is not supported by the evidence. On the contrary, the evidence shows conclusively that there are other industries in Indiana at least equally as hazardous as the coal industry.

The second alleged justification is also not supported by the evidence, but if it were, in our opinion it would not be a reasonable justification for a classification. That an industry has more variety in the nature of the injuries sustained by its employees is no reasonable basis, as we view it, for legislative classification.

Appellant contends that the classification is not justified on the basis of hazard, neither as to the extent nor as to the variety of the injuries sustained.

If not justified on the basis of hazard then the question is on what basis can the classification be justified, if any. It is alleged in appellees' answer that practically all other industries had elected to accept the Indiana Compensation Law, thus leaving the inference that the compulsory features herein complained of was not necessary as to such other industries. It is also alleged in appellees' answer that practically all the coal industry had elected to reject the Compensation Law, thus leaving the inference that the compulsory feature *was* necessary as to the coal industry. In our opinion these allegations utterly fail to justify the classification. The other industries referred to are left free to reject the Compensation Law at their pleasure. The Compensation Law with them is not a law but a convenience which they may use or disregard as they see fit. On the other hand these allegations, if they do anything, show that while the Legislature was not willing (either because it did not deem it necessary or because it did not desire to so act) to mandate the other industries referred to, yet it was willing to mandate the coal industry. In our opinion these allegations positively show an arbitrary attitude of mind toward the coal industry.

Appellees also allege in their answer that without the compulsory feature of the Compensation Law the coal operators will continue to operate under the liability laws of the State of Indiana (we have shown them to be stringent) and that "employees and dependents thereof will thereby be deprived of the benefits of the Workmen's Compensation Laws of Indiana, and be subjected to the delays, expenses, inadequate settlements, and vexations incident to the collection and attempted collection of damages, and in many cases said employees and dependents under said liability laws will not be able to establish their causes of action in the courts and will be entirely defeated and without any remedy or redress, and will become the objects of charity."

In answer to appellees' contention as above set out, we beg to suggest that it is argument which is as applicable to all other hazardous industries in the State of Indiana as to the coal industry, and, in the main, it is more applicable because of the fact it is admitted by appellees that the United Mine Workers of Indiana "employ attorneys at an annual salary to handle and prosecute personal injury claims and suits and compensation claims", and the evidence shows that there are no contingent fees or unnecessary expenses incurred in connection with the prosecution of said suits.

In view of the issues in this case, the complaint on the part of appellant and the answer on the part of appellee, we contend that the classification must be upheld, if at all, upon the theory of appellees' answer, and it is our opinion that the facts relied upon by appellee must in fairness be decided in favor of appellant. We hold that appellees in their answer have utterly failed to conceive a state of facts which reasonably sustains the classification.

## EQUAL LAWS.

In the opinion in the case of *Yick Wo vs. Hopkins*, 118 U. S., page 356 at page 369, this Honorable Court says that, "*the equal protection of the laws is a pledge of the protection of equal laws,*" and in the opinion in the case of *Mountain Timber Company v. Washington*, 243 U. S., page 219 at page 234, this Honorable Court says, "*While plaintiff in error is an employer, and cannot succeed without showing that its constitutional rights as employer are infringed, yet it is evident that the employer's exemption from liability to private action is an essential part of the legislative scheme and the quid pro quo for the burdens imposed upon him, so that if the act is not valid as against employees, it is not valid as against employers.*"

In view of the force and effect of the above quoted legal proposition, appellant contends that the conclusion is inevitable that the employees of the other hazardous industries in the State of Indiana have not the protection of equal laws afforded the employees in the coal industry, and that the employers in the coal industry are bearing burdens not borne by other industries equally as hazardous as the coal industry.

Respectfully submitted,

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## APPENDIX.

## A.

WORKMEN'S COMPENSATION ACT OF INDIANA, ENACTED IN  
1915, AS AMENDED IN 1917 AND 1919.

An Act to promote the prevention of industrial accidents: To cause provisions to be made for adequate medical and surgical care for injured employees: To establish rates of compensation for personal injuries or death sustained by employees in the course of employment: To provide methods for insuring the payment of such compensation: To create an industrial board for the administration of the act and to prescribe the powers and duties of such board: To abolish the state bureau of inspection and provide for the transfer to said industrial board certain rights, powers and duties of said state bureau of inspection.

## PART I.

## RIGHTS AND REMEDIES.

Section 1. Be it enacted by the General Assembly of the State of Indiana, That this act shall be known as "The Indiana Workmen's Compensation Act."

Sec. 2. From and after the taking effect of this act, every employer and every employee, except as herein stated, shall be presumed to have accepted the provisions of this act respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby: unless he shall have given prior to any accident

resulting in injury or death notice to the contrary in the manner herein provided. This act shall not apply to railroad employees engaged in train service.

Sec. 3. Either an employer or an employee, who has excepted himself, by proper notice, from the operation of this act, may at any time waive such exemption and thereby accept the provisions of this act by giving notice as herein provided.

The notice of exemption and the notice of acceptance heretofore referred to shall be given thirty days prior to any accident resulting in injury or death, provided that if any such injury occurred less than thirty days after the date of employment, notice of such exemption or acceptance given at the time of employment shall be sufficient notice thereof. The notice shall be in writing or print in a substantial form prescribed by the Industrial Board and shall be given by the employer by posting the same in a conspicuous place in the plant, shop, office, room or place where the employee is employed, or by serving it personally upon him; and shall be given by the employee by sending the same in registered letter addressed to the employer at his last known residence or place of business, or by giving it personally to the employer, or any of his agents upon whom a summons in civil action may be served under the laws of the State.

A copy of the notice in prescribed form shall also be filed with the Industrial Board.

Sec. 4. Every contract of service between any employer and employee covered by this act, written or implied, now in operation or made or implied prior to the taking effect of this act, shall, after the act has taken effect, be presumed to continue; and every such contract



made subsequent to the taking effect of this act shall be presumed to have been made subject to the provisions of this act: unless either party shall give notice, as provided in Section 3, to the other party to such contract that the provisions of this act other than Sections 10, 11 and 67 are not intended to apply.

A like presumption shall exist equally in the case of all minors unless notice of the same character be given by or to the parent or guardian of the minor.

Sec. 5. Every employer who accepts the compensation provisions of this act shall insure the payment of compensation to his employees and their dependents in the manner hereinafter provided, or procure from the Industrial Board a certificate authorizing him to carry such risk without insurance, and while such insurance or such certificate remains in force he or those conducting his business shall be liable to any employee and his dependents for personal injury or death by accident arising out of and in the course of employment only to the extent and in the manner herein specified.

Sec. 6. The rights and remedies herein granted to an employee subject to this act on account of personal injury or death by accident shall exclude all other rights and remedies of such employee, his personal representatives, dependents or next of kin, at common law or otherwise on account of such injury or death.

Sec. 7. Nothing in this act shall be construed to relieve any employer or employee from penalty for failure or neglect to perform any statutory duty.

Sec. 8. No compensation shall be allowed for an injury or death due to the employee's intentionally self-inflicted injury, his intoxication, his commission of a felony

or misdemeanor, his wilful failure or refusal, to use a safety appliance, his wilful failure or refusal to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous place, his wilful failure or refusal to perform any statutory duty or to any other wilful misconduct on his part. The burden of proof shall be on the defendant.

Sec. 9. This act, except Section 67, shall not apply to casual laborers, as defined in clause (b) of Section 76, nor to farm or agricultural employees, nor to domestic-servants, nor to the employers of such persons, unless such employees and their employers file with the Industrial Board their voluntary joint election to be so bound.

Sec. 10. Every employer who elects not to operate under this act shall not in any suit at law by an employee to recover damages for personal injury or death by accident be permitted to defend any such suit at law upon any one or all of the following grounds:

- (a) That the employee was negligent;
- (b) That the injury was caused by the negligence of a fellow employee;
- (c) That the employee had assumed the risk of the injury.

Sec. 11. Every employee who elects not to operate under this act shall, in any action to recover damages for personal injury or death brought against an employer accepting the compensation provisions of this act, proceed at common law, and the employer may avail himself of the defenses of contributory negligence, negligence of a fellow servant and assumption of risk, as such defenses exist at common law.

Sec. 12. When both the employer and employee elect not to operate under this act, the liability of the employer shall be the same as though he alone had rejected the terms of this act, and in any suit brought against him the employer shall not be permitted to avail himself of any of the common law defenses cited in Section 11.

Sec. 13. Whenever an injury or death, for which compensation is payable under this act, shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages to respect thereto, the injured employee, or his dependants, in case of death, at his or their option, may claim compensation from the employer or proceed at law against such other person to recover damages or may proceed against both the employer and such other person at the same time, but he or they shall not collect from both; and, if compensation is awarded and accepted under this act, the employer, having paid compensation or having become liable therefor, may collect in his own name or in the name of the injured employee, or, in case of death, in the name of his dependents from the other person in whom legal liability for damage exists, the compensation paid or payable to the injured employee or his dependents.

Sec. 14. The State, any political division thereof, any municipal corporation, any corporation, partnership or person, contracting for the performance of any work without exacting from the contractor a certificate from the Industrial Board showing that such contractor has complied with Section 68 of this act, shall be liable to the same extent as the contractor for compensation, physician's fees, hospital fees, nurses' charges, and burial expenses on account of the injury or death of any employee of such

contractor, due to an accident arising out of and in the course of the performance of the work covered by such contract.

Any principal contractor, intermediate contractor, or sub-contractor, who shall sublet any contract for the performance of any work, without requiring from such sub-contractor a certificate from the Industrial Board, showing that such sub-contractor has complied with Section 68 hereof, shall be liable to the same extent as such sub-contractor for the payment of compensation, physician's fees, hospital fees, nurse's charges, and burial expenses on account of the injury or death of any employee of such sub-contractor due to an accident arising out of and in the course of the performance of the work covered by such sub-contract.

That the State, any political division thereof, any municipal corporation, any corporation, partnership, person, principal contractor, intermediate contractor, or sub-contractor, paying compensation, physician's fees, hospital fees, nurse's charges, or burial expenses under the foregoing provisions of this section, may recover the amount paid from any person who, independently of such provisions, would have been liable for the payment thereof.

Every claim, filed with the Industrial Board under this section, shall be instituted against all parties liable for payment, and said board, in its award, shall fix the order in which said parties shall be exhausted, beginning with the immediate employer.

Sec. 15. No contract or agreement, written or implied, no rule, regulation or other device, shall in any manner operate to relieve any employer in whole or in part of any obligation created by this act.

Sec. 16. All rights of compensation granted by this act shall have the same preference or priority of the whole thereof against the assets of the employer as is allowed by law for any unpaid wages for labor.

Sec. 17. No claim for compensation under this act shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors.

Sec. 18. The provisions of this act except Sections 3, 4, 10, 11 and 12, shall apply to the State, to all political divisions thereof, to all municipal corporations within the State, to persons, partnerships, and corporations engaged in mining coal, and to the employees thereof.

Sec. 19. This act, except Section 67, shall not apply to employees engaged in interstate or foreign commerce, nor to their employers, in case the laws of the United States provide for compensation or for liability for injury or death by accident of such employees.

Sec. 20. Every employer and employee under this act, except as provided in Section 19, shall be bound by the provisions of the act whether injury by accident or death resulting from such injury occurs within the State or in some other state or in a foreign country.

Sec. 21. The provisions of this act shall not apply to injuries or death nor to accidents which occurred prior to the taking effect of the act.

## PART II.

### COMPENSATION SCHEDULE.

Sec. 22. Unless the employer or his representative shall have actual knowledge of the occurrence of an injury or death at the time thereof or shall acquire such knowl-

edge afterward, the injured employee or his dependents, as soon as practicable after the injury or death resulting therefrom, shall give written notice to the employer of such injury or death.

Unless such notice is given or knowledge acquired within thirty days from the date of the injury or death, no compensation shall be paid until and from the date such notice is given or knowledge obtained. No lack of knowledge by the employer or his representative and no want, failure, defect or inaccuracy of the notice shall bar compensation, unless the employer shall show that he is prejudiced by such lack of knowledge or by such want, failure, defect or inaccuracy of the notice, and then only to the extent of such prejudice.

Sec. 23. The notice provided for in the preceding section shall state the name and address of the employee, the time, place, nature and cause of the injury or death, and shall be signed by the injured employee or by some one in his behalf or by one or more of the dependents, in case of death, or by some person in their behalf. Said notice may be served personally upon the employer, or upon any foreman, superintendent or manager of the employer to whose orders the injured or deceased employee was required to conform or upon any agent of the employer upon whom a summons in a civil action may be served under the laws of the state, or may be sent to the employer by registered letter, addressed to his last known residence or place of business.

Sec. 24. The right to compensation under this act shall be forever barred unless within two years after the injury, or if death results therefrom, within two years after such death, a claim for compensation thereunder shall be filed with the Industrial Board.

Sec. 25. During the first thirty days after an injury the employer shall furnish or cause to be furnished free of charge to the injured employee an attending physician, for the treatment of his injuries, and in addition thereto such surgical, hospital and nurse's services and supplies as the attending physician or the industrial board may deem necessary.

And during the whole or any part of the remainder of the period of disability or impairment resulting from the injury, the employer may continue to furnish such physician, services and supplies. If, by reason of the nature of the injury or the process of recovery treatment is necessary for a longer period than thirty days, the Industrial Board may require the employer to furnish such treatment for an additional period, not exceeding thirty days. The refusal of the employee to accept such service and supplies, when so provided by the employer, shall bar the employee from all compensation during the period of such refusal unless in the opinion of the Industrial Board, the circumstances justify such refusal.

If in an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital or nurse's services and supplies as herein specified, or for other good reason, a physician other than that provided by the employer treats the injured employee within the first thirty days or necessary and proper surgical, hospital, or nurse's services and supplies are procured within said period, the reasonable cost of such service and supplies shall, subject to the approval of the Industrial Board, be paid by the employer.

Sec. 26. The pecuniary liability of the employer for medical, surgical and hospital service herein required shall

be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

Sec. 27. After an injury and during the period of resulting disability, the employee, if so requested by his employer or ordered by the Industrial Board, shall submit himself to examination, at reasonable times and places, by a duly qualified physician, or surgeon designated and paid by the employer or the Industrial Board. The employee shall have the right to have present at any such examination any duly qualified physician or surgeon provided and paid by him. No fact communicated to, or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, shall be privileged, either in the hearings provided for in this act, or any action at law brought to recover damages against any employer who may have accepted the compensation provisions of this act. If the employee refuses to submit himself to or in any way obstructs such examination, his right to compensation and his right to take or prosecute any proceeding under this act shall be suspended until such refusal or obstruction ceases, and no compensation shall at any time be payable for the period of suspension unless in the opinion of the Industrial Board the circumstances justify the refusal or obstruction.

The employer, or the Industrial Board, shall have the right in any case of death to require an autopsy at the expense of the party requiring same.

Sec. 28. No compensation shall be allowed for the first seven calendar days of disability resulting from an injury.



except the benefits provided for in Section 25; but if disability extends beyond that period compensation shall commence with the eighth day after the injury.

Sec. 29. Where the injury causes total disability for work, there shall be paid to the injured employee during such total disability, but not including the first seven days thereof, a weekly compensation equal to fifty-five percent of his average weekly wages for a period of not to exceed five hundred weeks.

Sec. 30. Where the injury causes partial disability for work, there shall be paid to the injured employee during such disability, but not including the first seven days thereof, a weekly compensation equal to one-half of the difference between his "average weekly wages" and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks.

In case the partial disability begins after a period of total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

Sec. 31. For injuries in the following schedule the employee shall receive in lieu of all other compensation, on account of said injuries, a weekly compensation of fifty-five percent of his average weekly wages for the periods stated for said injuries respectively to-wit:

(a) Amputations: For the loss by separation, of the thumb, sixty weeks, of the index finger forty weeks, of the second finger thirty-five weeks, of the third or ring finger thirty weeks, of the fourth or little finger twenty weeks, of the hand by separation below the elbow joint two hundred weeks, of the arm above the elbow joint two hundred and fifty weeks, of the big toe sixty weeks, of the second toe thirty weeks, of the third toe twenty weeks of the fourth

toe fifteen weeks, of the fifth or little toe ten weeks, of the foot below the knee joint one hundred and fifty weeks and of the leg above the knee joint two hundred weeks. The loss of more than one phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two phalanges of a finger shall be considered as the loss of the entire finger. That the loss of not more than one phalange of a thumb or toe shall be considered as the loss of one-half of the thumb or toe and compensation shall be paid for one-half of the period for the loss of the entire thumb or toe. That the loss of not more than two phalanges of a finger shall be considered as the loss of one-half the finger and compensation shall be paid for one-half of the period for the loss of the entire finger.

(b) *Loss of use:* The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange shall be considered as the equivalent of the loss, by separation, of the arm, hand, thumb, finger, leg, foot, toe or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(c) *Partial loss of use:* For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe or phalange.

(d) For injuries resulting in total permanent disability five hundred weeks.

(e) For the loss of both hands, or both feet, or the sight of both eyes or any two of such losses in the same accident five hundred weeks.

(f) For the permanent loss of the sight of an eye or its reduction to one-tenth of normal vision with glasses,

one hundred and fifty weeks, and for any other permanent reduction of the sight of an eye compensation shall be paid for a period proportionate to the degree of such permanent reduction.

(g) For the permanent and complete loss of hearing, one hundred weeks.

(h) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the Industrial Board, not exceeding five hundred weeks.

(i) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the Industrial Board, not exceeding two hundred weeks.

(j) For injuries causing temporary total disability for work there shall be paid to the injured employee during such total disability but not including the first seven calendar days thereof, a weekly compensation equal to fifty-five percent of his average weekly wages for a period not to exceed five hundred weeks.

(k) For injuries causing temporary partial disability for work compensation shall be paid to the injured employee during such disability, but not including the first seven calendar days, a weekly compensation equal to fifty-five percent of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred weeks. In case the partial disability begins after the period of temporary total disability, the latter period shall be deducted from the maximum period allowed for partial disability.

(1) No compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work for the first seven calendar days of disability resulting from such injuries except the benefits provided for in Section 25; but if disability extends beyond that period, compensation shall commence with the beginning of the eighth day of such disability.

Sec. 32. If an injured employee refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless in the opinion of the Industrial Board such refusal was justifiable.

Sec. 33. If an employee has sustained a permanent injury in another employment than that in which he received a subsequent permanent injury by accident, such as specified in Section 31, he shall be entitled to compensation for the subsequent injury in the same amount as if the previous injury had not occurred.

Sec. 34. If an employee received an injury for which compensation is payable while he is still receiving or entitled to compensation for a previous injury in the same employment, he shall not at the same time be entitled to compensation for both injuries, unless it be for a permanent injury, such as specified in Section 31; but he shall be entitled to compensation for that injury and from the time of that injury which will cover the longest period and the largest amount payable under this act.

Sec. 35. If an employee receives a permanent injury such as specified in Section 31, after having sustained another permanent injury in the same employment he shall be entitled to compensation for both injuries but the total

compensation shall be paid by extending the period and not by increasing the amount of weekly compensation.

When the previous and subsequent permanent injuries result in total permanent disability, compensation shall be payable for permanent total disability, but payments made for the previous injury shall be deducted from the total payment of compensation due.

Sec. 36. When an employee receives or is entitled to compensation under this act for an injury and dies from any other cause than the injury for which he was entitled to compensation, payment of the unpaid balance of compensation shall be made to his next of kin dependent upon him for support.

Sec. 37. When death results from the injury within three hundred weeks, there shall be paid a weekly compensation equal to fifty-five percent of the deceased's average weekly wages during such remaining part of three hundred weeks as compensation shall not have been paid to the deceased on account of the injury, in equal shares to all dependents of the employee wholly dependent upon him for support at the time of the death. If the employee leaves dependents only partially dependent upon his earning for support at the time of his injury, the weekly compensation to those dependents shall be in the same proportion to the weekly compensation for persons wholly dependent as the average amount contributed weekly by the deceased to such partial dependent bears to his average weekly wages at the time of the injury.

Sec. 38. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she is living at the time of his death, or upon whom the laws of the state impose the obligation of her support at such time.

(b) A husband, who is both physically and financially incapable of self-support, upon his wife with whom he is living at the time of her death.

(c) A child under the age of eighteen years upon the parent with whom he or she is living at the time of the death of such parent.

(d) A child under eighteen years upon the parent with whom he or she may not be living at the time of the death of such parent, but upon whom, at such time, the laws of the state impose the obligation to support such child.

(e) A child over the age of eighteen years who is either physically or mentally incapacitated from earning his or her own support, upon a parent with whom he or she is living at the time of the death of such parent, or upon whom the laws of the state at such time impose the obligation of the support of such child.

As used in this section, the term "child" shall include step-children, legally adopted children, posthumous children, and acknowledged illegitimate children, but shall not include married children; the term "parent" shall include step-parents and parents by adoption.

In all other cases, questions of total dependency shall be determined in accordance with the fact, as the fact may be at the time of the death and the question of partial dependency shall be determined in like manner as of date of the injury. If there is more than one person wholly dependent, the death benefit shall be divided equally among

them; and persons partially dependent, shall receive not (sic) part thereof.

If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among the partial dependents according to the relative extent of their dependency.

The dependency of a widow, widower or child, shall terminate with his or her marriage subsequent to the death of the employee.

The dependency of a child, except a child physically or mentally incapacitated from earning, shall terminate with the attainment of eighteen years of age.

Sec. 39. In all cases of the death of an employee from an injury by an accident arising out of and in the course of his employment under such circumstances that the employee would have been entitled to compensation if death had not resulted, the employer shall pay the burial expenses of such employee, not exceeding one hundred dollars.

Sec. 40. In computing compensation under the foregoing sections, the average weekly wages of an employee shall be considered not to be more than twenty-four dollars, nor less than ten dollars; and provided further, That the total compensation payable under this act shall in no case exceed five thousand dollars (\$5,000).

Sec. 41. Any payments made by the employer to the injured employee during the period of his disability, or to his dependents, which by the terms of this act were not due and payable when made, may subject to the approval of the Industrial Board, be deducted from the amount to be paid as compensation: Provided, That in case of disability such deduction shall be made by shortening the period during which compensation must be paid and not by reducing the

amount of the weekly payments, unless otherwise hereinafter specified.

Sec. 42. When so provided in the compensation agreement or in the award of the Industrial Board, compensation may be paid semi-monthly or monthly instead of weekly.

Sec. 43. After the lapse of twenty-six compensation weeks and the payment in full of twenty-six weeks' compensation, the remainder of the compensation in unusual cases, upon the agreement of the employer and the employee or his dependents, and the approval of the Industrial Board, may be redeemed, in whole or in part, by the cash payment, in a lump sum, of the commutable value of the installments to be redeemed.

The Board may, at any time, in the case of permanently disabling injuries of a minor, require that he be compensated by the cash payment in a lump sum of the commutable value of the unredeemed installments of the compensation to which he is entitled.

In all such cases, the commutable value of the future, unpaid installments of compensation shall be the present value thereof, at the rate of three percent interest, compounded annually.

Sec. 44. Whenever the Industrial Board deems it expedient, any lump sum under the foregoing section shall be paid by the employer to some suitable person or corporation appointed by the Circuit or Superior Court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner provided by the Board. The receipt of such trustee for the amount as paid shall discharge the employer or anyone else who is liable therefor.

Sec. 45. The power and jurisdiction of the Industrial Board over each case shall be continuing, and, from time to



time, it may, upon its own motion or upon the application of either party, on account of a change in conditions, make such modification or change in the award, ending, lessening, continuing or extending the payments, previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this act.

Upon making any such change, the Board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder.

The Board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of one year from the termination of the compensation period fixed in the original award, made either by an agreement or upon hearing. The Board may at any time correct any clerical or mistake of fact in any finding or award.

Sec. 46. When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen years of age, do not exceed one hundred dollars, the payment thereof may be made directly to such employee or dependent, except when the Industrial Board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen years of age, exceed one hundred dollars, the payment thereof shall be made to a trustee, appointed by the Circuit or Superior court, or to a duly qualified guardian, or to a parent upon the order of the Industrial Board. The payment of compensation, due to any person eighteen years of age or over, may be made directly to such person.

Sec. 47. If an injured employee or a dependent is mentally incompetent or a minor at the time when any right or privilege accrues to him under this act, his guardian or trustee may, in his behalf, claim and exercise such right or privilege.

Sec. 48. No limitation of time provided in this act shall run against any person who is mentally incompetent or a minor dependent, or a minor, so long as he has no guardian or trustee.

Sec. 49. Whenever any employee for whose injury or death compensation is payable under this act shall at the time of the injury be in the joint service of two or more employers subject to this act, such employers shall contribute to the payment of such compensation in proportion to their wage liability to such employees: Provided, however, That nothing in this section shall prevent any reasonable arrangement between such employers for a different distribution as between themselves of the ultimate burden of compensation.

### PART III.

#### ADMINISTRATION.

Sec. 50. There is hereby created the Industrial Board of Indiana, which shall consist of five members, two of whom shall be attorneys, and not more than three of whom shall be of the same political party, appointed by the Governor, one of whom he shall designate as Chairman.

The chairman of said Board shall be an attorney of recognized qualifications.

Each member of the Board shall hold his office for four years, and until his successor is appointed and qualified,

unless removed by the Governor, except that the three present members of said Board shall continue to serve for and during the terms for which they have been appointed, unless removed as hereinafter provided, and of the two additional members hereby provided for, one shall be appointed for two years and one for four years. Thereafter, upon the expiration of the term of any member, the Governor shall appoint his successor for the full term of four years.

Each member of the Board shall devote his entire time to discharge of the duties of his office and shall not hold any other position of trust or profit or engage in any occupation or business interfering with or inconsistent with the discharge of his duties as such member.

Any member of said Board may be removed by the Governor at any time for incompetency, neglect of duty, misconduct in office or other good cause, to be stated in writing in the order of removal.

In case of a vacancy in the membership of said Board, the Governor shall appoint for the unexpired term.

Sec. 51. The annual salary of each member of the Board shall be four thousand dollars.

The Board may appoint a secretary at a salary of not more than twenty-five hundred dollars a year and may remove him. The secretary shall have the authority to administer oaths and issue subpoenas.

The Board, subject to approval of the Governor, may employ and fix the compensations of such clerical and other assistants as it may deem necessary. The clerical and other assistants shall be employed with special reference to their qualifications for the discharge of the duties assigned to them, and without regard to their political affiliations, except that not more than sixty percent of such employees

shall be of the same political party, provided that none of the present employees shall be discharged merely to establish such political proportion.

The members of the Board and its assistants shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the Board, but such expenses shall be sworn to by the person who incurred the same and shall be approved by the chairman of the Board before the payment is made.

All salaries and expenses of the Board shall be audited and paid out of the state treasury in the manner prescribed for similar expenses in other departments or branches of the state service.

Sec. 52. The rights, powers and duties conferred by law upon the State Bureau of Inspection of the State of Indiana are hereby continued in full force and are hereby transferred to the Industrial Board hereby created and shall be held and exercised by them under the laws heretofore in force and the said State Bureau of Inspection is hereby abolished. The present Chief Inspector of said State Bureau of Inspection is hereby made a member of said Industrial Board until the expiration of one year from the date of the taking effect of this act and until his successor is appointed and qualified. The deputy inspectors heretofore appointed by the Governor as deputy inspectors in said State Bureau of Inspection, to-wit: Inspector of Buildings, Factories and Workshops, Inspector of Boilers and Inspector of Mines and Mining together with their assistant inspectors, are hereby continued in their respective office, at their present salaries, until the expiration of the terms for which they are respectively appointed and until their successors are appointed and qualified and each of

them respectively shall have and perform all the rights, powers and duties now held and performed by each of them respectively, together with such other rights, powers and duties as may be prescribed by said Industrial Board. Upon the terminations of the said terms of office for which said deputy inspectors have been appointed, said Industrial Board, with the concurrence of the Governor, shall appoint their successors to serve during the pleasure of said Industrial Board.

Sec. 53. All the rights, powers and duties of the Labor Commission of the State of Indiana, heretofore created and subsequently transferred to and vested in the State Bureau of Inspection, are hereby abolished.

Sec. 54. The Board shall be provided with adequate offices in the Capitol or some other suitable building in the city of Indianapolis in which the records shall be kept and its official business be transacted during regular business hours; it shall also be provided with necessary office furniture, stationery and other supplies.

The Board or any member thereof may hold sessions at any place within the state as may be deemed necessary.

Sec. 55. The Board may make rules not inconsistent with this act for carrying out the provisions of this act. Processes and procedure under this act shall be as summary and simple as reasonably may be. The Board or any member thereof shall have the power for the purpose of this act to subpoena witnesses, administer or cause to have administered oaths, and to examine or cause to have examined such parts of the books and records of the parties to a proceeding as relate to questions in dispute.

The county sheriff shall serve all subpoenas of the Board and shall receive the same fees as now provided by law for

like service in civil actions; each witness who appears in obedience to such subpoena of the Board shall receive for attendance the fees and mileage for witnesses in civil cases in the courts.

The Circuit or Superior Court shall, on application of the Board or any member thereof, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers and records.

Sec. 56. The Board shall prepare and cause to be printed, and upon request furnish free of charge to any employer or employee, such blank forms and literature as it shall deem requisite to facilitate or promote the efficient administration of this act. The accident reports and reports of attending physicians shall be the private records of the Board, which shall be open to the inspection of the employer, the employee and their legal representatives, but not to the public unless, in the opinion of the Board, the public interest shall so require.

That the Board shall make to the Governor annually, on or before the first day of December, a report of its work during the preceding fiscal year, in such form as it may determine, with the approval of the Governor. In order to prevent the accumulation of unnecessary and useless files of papers, the Board, in its discretion, may destroy all papers which have been on file for more than two years, when there is no claim for compensation pending, or, when compensation has been awarded either by agreement or upon hearing, and more than one year has elapsed since the termination of the compensation period as fixed by such Board.

Sec. 57. If after seven days from the date of the injury or at any time in case of death, the employer and the in-

injured employee or his dependents reach an agreement in regard to compensation under this act, a memorandum of the agreement in the form prescribed by the Industrial Board shall be filed with the Board; otherwise such agreement shall be voidable by the employee, or his dependents.

If approved by the Board, thereupon the memorandum shall for all purposes be enforceable by court decree as hereinafter specified. Such agreement shall be approved by said Board only when the terms conform to the provisions of this act.

Sec. 58. If the employer and the injured employee or his dependents fail to reach an agreement in regard to the compensation payable under this act, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the Industrial Board, and then disagree as to the continuance of payments under such agreement, because of a change in conditions since the making of such agreement, either party may make an application, to the Industrial Board, for the determination of the matters in dispute.

Upon the filing of such application, the Board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties in the manner prescribed by the Board of the time and place of hearing. The hearing of all claims for compensation, on account of injuries occurring within the state, shall be held in the county in which the injury occurred, except when the parties consent to a hearing elsewhere.

Sec. 59. The Board by any or all of its members shall hear the parties at issue, their representatives and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceed-

ings, and a copy thereof shall immediately be sent to each of the parties in dispute.

Sec. 60. If an application for review is made to the Board within seven days from the date of an award, made by less than all the members, the full Board, if the first hearing was not held before the full Board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives and witnesses as soon as practicable and shall make an award and file the same with a finding of the facts on which it is based and the rulings of law by the full Board, if any, and send a copy thereof to each of the parties in dispute, in like manner as specified in the foregoing section.

Sec. 61. An award of the Board, by less than all of the members, as provided in Section 59, if not reviewed as provided in Section 60, shall be final and conclusive.

An award by the full board shall be conclusive and binding as to all questions of the fact, but either party to the dispute may within thirty days from the date of such award appeal to the Appellate Court for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.

The Board, of its own motion, may certify questions of law to said Appellate Court for its decision and determination.

An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts.

All such appeals and certified questions of law shall be submitted upon the date filed in the appellate court, shall be advanced upon the docket of said court, and shall be



determined at the earliest practicable date, without any extensions of time for filing briefs.

An award of the full Board affirmed on appeal, shall be increased thereby five percent.

Sec. 62. Any party in interest may file in the Circuit or Superior Court of the county in which the injury occurred, a certified copy of a memorandum of agreement approved by the Board or of an order or decision of the Board, or of an award of the Board unappealed from, or of an award of the Board rendered upon an appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though said judgment had been rendered in a suit duly heard and determined by said court.

Any such judgment of said Circuit or Superior Court unappealed from or affirmed on appeal or modified in obedience to the mandate of the Appellate Court, shall be modified to conform to any decision of the Industrial Board, ending, diminishing or increasing any weekly payment under the provisions of section 45 of this act, upon the presentation to it of a certified copy of such decision.

Sec. 63. In all proceedings before the Industrial Board or in a court under this act, the costs shall be awarded and taxed as provided by law in ordinary civil action in the Circuit Court.

Sec. 64. The Board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Said physician or surgeon shall be allowed traveling expenses and a reason-

able fee to be fixed by the Board not exceeding ten dollars for each examination and report, but the Board may allow additional reasonable amounts in extraordinary cases.

The fees and expenses of such physician or surgeon shall be paid by the State.

Sec. 65. The fees of attorneys and physicians and charges of nurses and hospitals for services under this act shall be subject to the approval of the Industrial Board. When any claimant for compensation is represented by an attorney in the prosecution of his claim, the Industrial Board shall fix and state in the award, if compensation be awarded, the amount of the claimant's attorney's fee. The fee so fixed shall be binding upon both the claimant and his attorney, and the employer shall pay to the attorney out of the award, the fee so fixed and the receipt of the attorney therefor shall fully acquit the employer for an equal portion of the award. The Industrial Board may withhold the approval of the fees of the attending physician in any case until he shall file report with the Industrial Board on the form prescribed by such Board.

Sec. 66. All questions arising under this act, if not settled by agreement of the parties interested therein with the approval of the Board, shall be determined by the Board except as otherwise herein provided for.

Sec. 67. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one week after the occurrence and knowledge thereof, as provided in Section 22, of an injury to an employee causing his absence from work for more than one day, a report thereof shall be made in writing and mailed to the Industrial Board on blanks to be procured from the Board for the purpose.

Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of 60 days, then also at the expiration of such period the employer shall make a supplementary report to the Board on blanks to be procured from the Board for the purpose.

The said report shall contain the name, nature and location of the business of the employer, and name, age, sex, wages and occupation of the injured employee and shall state the date and hour of the accident causing the injury, the nature and cause of the injury and such other information as may be required by the Board.

Any employer who refuses or neglects to make the report required by this section shall be liable for a penalty of not more than twenty-five dollars for each refusal or neglect, to be recoverable in any court of competent jurisdiction in a suit by the Board.

## PART IV.

### INSURANCE.

Sec. 68. Every employer of the state, except agricultural employers and the employers of domestic servants, shall register annually on or before the first day of September, with the Industrial Board and procure the certificate of said Board, showing such registration. Each such employer shall file an application with the Industrial Board, annually on or before the first day of September, for registration and a certificate thereof, upon a form therefor, prescribed by the Industrial Board and furnished by it, in which the employer shall state the following facts to-wit: The correct name of the employer, and, if a partnership,

both the firm name and the names of the partners. The postoffice address of the employer, and when a partnership, the postoffice address of each partner; the nature and location of the business in which the employer is engaged; the number of employees; the sex of employees and the number of each sex, when both sexes are employed. Any employer failing to so file such application with the Industrial Board and procure a certificate of registration shall be fined not less than ten nor more than one hundred dollars.

The Industrial Board shall keep registry by cards of the employers of the state, by counties, arranged in alphabetical order as to the names of the counties and the names of the employers.

Every employer under this act shall either insure or keep insured his liability hereunder in some corporation, association or organization authorized to transact the business of workmen's compensation insurance in this state, or shall furnish to the Industrial Board satisfactory proof of his financial ability to pay direct the compensation in the amount and manner and when due as provided for in this act. In the latter case the Board may in its discretion require the deposit of an acceptable security indemnity or bond to secure the payment of compensation liabilities as they are incurred.

Sec. 69. Every employer who does not exempt himself from the compensation proceedings of this act and who does not procure from the Industrial Board a certificate of his financial ability to pay compensation direct, without insurance, shall within ten days after this act takes effect file with the Industrial Board in the form prescribed by it, and thereafter within ten days, after the termination of his insurance by expiration or cancellation evidence of his com-

pliance with the insurance provisions of Section 68, hereof, and all others relating to the insurance under this act.

That any employer hereafter coming under the compensation provisions hereof, shall in a like manner file like evidence of such compliance on his part.

If such employer refuses or neglects to comply with these provisions he shall be punished by a fine of ten cents for each employee at the time of the insurance becoming due, but not less than ten dollars nor more than fifty dollars for each day of such refusal or neglect and until the same ceases, and he shall be liable during continuance of such refusal or neglect to an employee either for compensation under this act or at law in the same manner as provided for in Section 10.

Sec. 70. Whenever an employer has complied with the provisions of Section 68 relating to self insurance, the Industrial Board shall issue to such employer a certificate which shall remain in force for a period fixed by the Board but the board may upon at least ten days' notice and a hearing to the employer revoke the certificate upon satisfactory evidence for such revocation having been presented. At any time after such revocation the Board may grant a new certificate to the employer upon his petition, and satisfactory proof of his financial ability.

Sec. 71. For the purpose of complying with the provisions of Section 68, groups of employers, to form Mutual Insurance Associations or Reciprocal Insurance Associations subject to such reasonable conditions and restrictions as may be fixed by the Industrial Board, are hereby authorized. Membership in such Mutual Insurance Associations or Reciprocal Insurance Associations so approved together

with evidence of the payment of premiums due, shall be evidence of compliance with Section 68.

Sec. 72. Subject to the approval of the Industrial Board any employer may enter into or continue any agreement with his employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this act. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees unless it confers benefits in addition to those provided under this act at least commensurate with such contributions.

Such substitute system may be terminated by the Industrial Board on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act; and in this case the Board shall determine upon the proper distribution of all remaining assets, if any, subject to the right of any party in interest to take an appeal to the Appellate Court.

Sec. 73. No insurer shall enter into or issue any policy of insurance under this act until its policy form shall have been submitted to and approved by the Industrial Board. The Industrial Board shall not approve the policy form of any insurance company until such company shall file with it the certificate of the auditor of state showing that such company is authorized to transact the business of workmen's compensation insurance in the state. That the filing of a policy form by any insurance company or reciprocal insurance association with the Industrial Board for ap-

proval shall constitute on the part of such company or association a conclusive and unqualified acceptance of each and all of the provisions of this act, and an agreement by it to be bound thereby.

All policies of insurance companies and of reciprocal insurance associations, insuring the payment of compensation under this act, shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured.

Any provision in any such policy attempting to limit or modify the liability of the company or association issuing the same shall be wholly void.

Every policy of any such company or association must contain the following provisions:

(a) The insurer hereby assures in full all the obligations to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits imposed upon or accepted by the insured under the provisions of "The Indiana Workman's Compensation Act."

(b) That this policy is made subject to the provisions of "The Indiana Workman's Compensation Act," and the provisions of said act relative to the liability of the insured to pay physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits to and for said employees, the acceptance of such liability by the insured, the adjustment, trial and adjudication of claims for such physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses, compensation or death benefits and the liability of the insurer to pay the same are and shall be a part of this policy contract as fully and completely as if written herein.

(c) That, as between this insurer and the employee, notice to or knowledge of the occurrence of the injury on the part of the insured (the employer) shall be notice or knowledge thereof, as the case may be, on the part of the insurer; that the jurisdiction of the insured (the employer) for the purpose of "The Indiana Workmen's Compensation Act," shall be the jurisdiction of this insurer, and this insurer shall in all things be bound by and shall be subject to awards, judgments and decrees rendered against the insured (the employer) under said act.

(d) That this insurer will promptly pay to the person entitled to the same, all benefits conferred by "The Indiana Workman's Compensation Act," including physician's fees, nurse's charges, hospital services, hospital supplies, burial expenses and all installments of compensation or death benefits that may be awarded or agreed upon under said act; that the obligation of this insurer shall not be affected by any default of the insured (the employer) after the injury or by any default in the giving of any notice required by this policy, or otherwise; that this policy is and shall be construed to be a direct promise by this insurer to the person entitled to physician's fees, nurse's charges, fees for hospital services, charges for hospital supplies, charges for burial, compensation or death benefits, and shall be enforceable in the name of such person.

(e) That any termination of this policy either by cancellation or expiration, shall not be effective as to employees of the insured covered hereby until ten days after written notice of such termination has been received by the Industrial Board of Indiana, at its office in Indianapolis, Indiana.

That all claims for compensation, nurse's charges, hospital services, hospital supplies, physician's fees or burial



expenses may be made directly against either the employer or the insurer or both, and the award of the Industrial Board may be made against either the employer or the insurer or both.

That if any insurer shall fail or refuse to pay any final award or judgment (except during the pendency of an appeal) rendered against it, or its insured, or, if it shall fail or refuse to comply with any provision of this act, the Industrial Board shall revoke the approval of its policy form, and shall not accept any further proofs of insurance from it until it shall have paid said award or judgment or complied with the violated provision of the act, and shall have re-submitted its policy form and received the approval thereof by the Industrial Board.

Sec. 74. No policy of insurance against liability arising under this act shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to same, all benefits conferred by this act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.

Sec. 75. Every policy for the insurance of the compensation herein provided or against liability thereof, shall be deemed to be made subject to the provisions of this act. No corporation, association or organization shall enter into any such policy of insurance unless its form shall have been approved by the Industrial Board.

## PART V.

### DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Sec. 76. In this act unless the context otherwise requires:

(a) "Employer" shall include the State and any political division, any municipal corporation within the state any individual, firm, association or corporation or the receiver or trustee of the same or the legal representatives of a deceased person using the services of another for pay. If the employer is insured it shall include his insurer so far as applicable.

(b) "Employee" shall include every person, including a minor, lawfully in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

(c) "Average weekly wages" shall mean the earning of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost seven or more calendar days during such period, although not in the same week, then the earnings for the remainder of such fifty-two weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the

earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed provided results just and fair to both parties will thereby be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or of the casual nature or terms of the employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the 52 weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

Wherever allowance of any character made to an employee in lieu of wages are specified part of the wage contract, they shall be deemed a part of his earnings.

(d) "Injury" and "Personal Injury" shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except as it shall result from the injury.

Sec. 77. If any section or provision of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Sec. 78. All acts and parts of acts inconsistent with any provisions of this act are hereby repealed to the extent of such inconsistency.

Sec. 79. This act shall take effect on the first day of September, 1915, except that Part III with the exception of Sec. 67, shall take effect upon the passage of this act.

### APPROPRIATION.

Sec. 80. For the purpose of paying the salaries and expenses of the members of the Industrial Board and its employees, the sum of \$70,000 or so much thereof as may be necessary is hereby appropriated.

Sec. 81. The provisions of this act shall not affect pending litigation.

### EMERGENCY.

Sec. 82. Whereas an emergency exists for the immediate taking effect of Part III of this act with the exception of Section 67, said Part III with said exception shall be in full force from and after the passage of this act.

### ADDITIONAL LEGISLATION.

In addition to the above, the legislature of 1917 also passed the following additional acts relating to workmen's compensation insurance:

Section 1. Be it enacted by the general assembly of the State of Indiana, That every company, corporation, individual, copartnership which is authorized to transact business in this state and engages in the business of liability insurance or workmen's compensation insurance shall, in addition to all other reserves required by law, establish and maintain a reserve for outstanding losses under insurance, against loss or damage from accident to or injuries suffered by an employee or other person for which the insured is liable, to be computed as follows:

(1) For all liability suits being defended under policies written more than

(a) Ten (10) years prior to the date as of which the statement is made, one thousand five hundred dollars (\$1,500) for each suit.

(b) Five (5) and less than ten (10) years prior to the date as of which the statement is made, one thousand dollars (\$1,000) for each suit.

(c) Three (3) and less than five (5) years prior to the date as of which the statement is made, eight hundred and fifty dollars (\$850) for each suit.

(2) For all liability policies written during the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty per centum (60%) of the earned liability premiums of each of such three (3) years less all loss and loss expense payments made under liability policies written in the corresponding years; but in any event, such reserve shall, for the first of such three (3) years, be not less than seven hundred and fifty dollars (\$750) for each outstanding liability suit on said year's policies.

(3) For all compensation claims under policies written more than three (3) years prior to the date as of which the statement is made, the present values at four per centum (4%) interest of the determined and the estimated future payments.

(4) For all compensation claims under policies written in the three (3) years immediately preceding the date as of which the statement is made, such reserve shall be sixty-five per centum (65%) of the earned compensation premiums of each of such three (3) years, less all loss and loss expense payments made in connection with such claims under policies written in the corresponding years; but in any event, in the case of the first year of any such three (3)

year period such reserves shall be not less than the present value at four per centum (4%) interest of the determined and the estimated unpaid compensation claims under policies written during such year: Provided, however, that in computing the reserve for the statement for December thirty-first, nineteen hundred and seventeen (1917), and December thirty-first, nineteen hundred and eighteen (1918), the ratios sixty per centum (60%) and sixty-two and one-half per centum (62½%) respectively shall be used instead of sixty-five per centum (65%) as heretofore provided.

Sec. 2. The term "earned premiums" as used herein shall include gross premiums charged on all policies written, including all determined excess and additional premiums, less return premiums, other than premiums returned to policyholders as dividends, and less reinsurance premiums and premiums on policies cancelled, and less unearned premiums on policies in force. But any participating company which has charged in its premiums a loading solely for dividends shall not be required to include such loading in its earned premiums, provided a statement of the amount of such loading has been filed with and approved by the auditor of state.

The term "compensation" as used in this act shall relate to all insurance effected by virtue of statutes providing compensation to employees for personal injuries irrespective of fault of the employer. The term "liability" shall relate to all insurance except compensation insurance against loss or damage from accident to or injuries suffered by an employee or other person and for which the insured is liable. The terms "loss payments" and "loss expense payments" as used herein shall include all payments to claimants, in-

cluding payments for medical and surgical attendance, legal expenses, salaries and expenses, salaries and expenses of investigators, adjusters and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of claims, whether such payments shall be allocated to specific claims or unallocated.

Sec. 3. All unallocated liability loss expense payments made in a given calendar year subsequent to the first four (4) years in which an insurer has been issuing liability policies shall be distributed as follows: Thirty-five per centum (35%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, ten per centum (10%) to the policies written in the second year preceding, ten per centum (10%) to the policies written in the third year preceding and five per centum (5%) to the policies written in the fourth year preceding, and such payments made in each of the first four (4) calendar years in which an insurer issues liability policies shall be distributed as follows: In the first calendar year one hundred per centum (100%) shall be charged to the policies written in that year, in the second year fifty per centum (50%) shall be charged to the policies written in that year and fifty per centum (50%) of the policies written in the preceding year, in the third calendar year forty per centum (40%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, and twenty per centum (20%) to the policies written in the second year preceding, and in the fourth calendar year thirty-five per centum (35%) shall be charged to the policies written in that year, forty per centum (40%) to the policies written in the preceding year, fifteen

per centum (15%) to the policies written in the second year preceding, and ten per centum (10%) to the policies written in the third year preceding, and a schedule showing such distribution shall be included in the annual statement. All unallocated compensation loss expense payments made in a given calendar year subsequent to the first three (3) years in which an insurer has been issuing compensation policies shall be distributed as follows: Forty per centum (40%) shall be charged to the policies written in that year, forty-five per centum (45%) to the policies written in the preceding year, ten per centum (10%) to the policies written in the second year preceding and five per centum (5%) to the policies written in the third year preceding, and such payments made in each of the first three (3) calendar years in which an insurer issued compensation policies shall be distributed as follows: In the first calendar year one hundred per centum (100%) shall be charged to the policies written in that year, in the second calendar year fifty per centum (50%) shall be charged to the policies written in that year and fifty per centum (50%) to the policies written in the preceding year, in the third calendar year, forty-five per centum (45%) shall be charged to the policies written in that year, forty-five per centum (45%) to the policies written in the preceding year and ten per centum (10%) to the policies written in the second year preceding, and a schedule showing such distribution shall be included in the annual statement. Whenever, in the judgment of the auditor of state the liability or compensation loss reserves of any insurer under his supervision, calculated in accordance with the foregoing provisions, are inadequate, he may, in his discretion, require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.



Sec. 4. Each insurer that writes liability or compensation policies shall include in the annual statement required by law a schedule of its experience thereunder in such form as the auditor of state may prescribe.

## APPENDIX.

## B.

DIGEST OF CASES INVOLVING THE CONSTITUTIONALITY OF  
WORKMEN'S COMPENSATION ACTS OF VARIOUS STATES  
WITH REFERENCE ESPECIALLY TO CLASSIFICATIONS  
MADE THEREIN.

## Iowa

*Hawkins v. Bleakley*, 37 Sup. Ct. Rep. 255, 243 U. S. 210,  
reported below in 220 Fed. 378.

Validity of same law sustained by Supreme Court of  
Iowa in *Hunter v. Colfax Consolidated Coal Co.*, 154 Iowa  
Rep. 1037, 157 N. W. Rep. 145.

The Iowa law is found, Section 2477, in Iowa Code Supplement of 1913.

It is a permissive law, and the term "employer" applies to any person, firm, association or corporation, including state, counties, municipal corporations, cities under special charter, school districts, and legal representatives of a deceased employer.

It does not apply to (a) household or domestic servants, farm or other laborers engaged in agricultural pursuits, nor to persons whose employment is of a casual nature. (Section 2477 m.)

The act is compulsory as to the State, counties, municipal corporations, school districts, cities under special charter or commission. (Section 2477 m.)

The act is held not to violate the Fourteenth Amendment. No constitutional objection was raised in the U. S. Supreme Court as to the "main purpose" of the Act.

*Hunter v. Colfax Coal Co.*, 157 Iowa 145, 154 N. W. 1037,  
L. R. A. 1917 D. 15 (Exhaustive note).

The law was attacked on the following, among other grounds:

- (1) That there was an improper classification.
  - (2) That it was in violation of the due process, etc., clause of the Fourteenth Amendment.
  - (3) That it improperly delegated judicial power.
- The law was held to be valid.

#### Illinois

*Deibekis v. The Link Belt Co.*, 261 Ill. 454, 104 N. E. 211;  
*Dietz v. Big Muddy Coal & Iron Co.*, 263 Ill. 480, 105  
N. E. 289;

*Victor Chemical Works v. Industrial Board*, 274 Ill. 11, 113  
N. E. 173.

In the case first above cited the validity of the Illinois Workmen's Compensation Law of Acts 1911, page 315, was attacked.

This law (which has been repealed by laws 1913, page 335) was a permissive act applying to employers engaged in the following occupations:

- (a) Building, maintaining or demolishing structures
- (b) Construction of electrical work.
- (c) Carriage by land or water and loading and unloading in connection therewith, exclusive of those employers coming under the Federal Employers' Liability Act.
- (d) Operating store houses.
- (e) Mining, surface mining, or quarry.
- (f) The manufacture, handling or use of explosive materials in dangerous quantities.

(g) Any enterprise in which molten metal or injurious gases or vapors or inflammable fluids were manufactured or used, generated, stored or conveyed in dangerous quantities.

(h) And any enterprise required by statute to guard machinery or appliances which are by the Act declared to be especially dangerous.

Apparently the classification above made was not seriously attacked, but as the Act limited the definition of employee to include only such as might be exposed to the necessary hazards of carrying on the businesses within the purview of the Act, it was claimed that this classification was unjust. The court held that excluding anyone who might be occupying a mere clerical position and those whose work was not subject to any of the general hazards, was a proper and reasonable classification. It also said that the classification of the businesses referred to seems to be a perfectly valid and reasonable one.

The conclusions reached in the cases above cited are reaffirmed by the Supreme Court of Illinois in the case of *Keeran v. Peoria, etc., Co.*, 277 Ill. 413, 115 N. E. 636. In *Friebel v. Chicago City R. Co.*, 280 Ill. 76, 117 N. E. 467, the attack was made upon the law because the injured employee was not permitted to maintain an action at law against a third person causing his injury, such third person being also subject to the Act. It is to be especially noted that in answering constitutional objections the Supreme Court of Illinois lays great stress upon the fact that the Act is a permissive one.

*Victor Chemical Works v. Industrial Board*, 274 Ill. 11 Held that properly construed the Act of 1913 was elective and not mandatory.

The Act includes within its provisions substantially the same extra hazardous employments as the Act of 1911, but permits any other employer to elect to come under its provisions.

### Pennsylvania

*Anderson v. Carnegie Steel Co.*, 99 Atl. 215.

The Workmen's Compensation Act of Pennsylvania (P. L. 736) was passed in 1915.

Purdon's Digest (13th Ed.) Vol. 7, p. 7777, *et seq.*

The act includes all natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the commonwealth, and all governmental agencies created by it.

Section 128 exempts persons engaged in domestic service or agriculture.

The Act is elective.

No question of improper classification was raised or decided in the above case. The law was held to be valid.

### Rhode Island

*Sayles v. Foley*, 96 Atl. 340. *Elective Act.*

The law was sustained as against an attack by the employee. The Court held:

1. That the classification of the act which excluded
  - (a) Casual employees.
  - (b) Those paid more than \$1,800 a year.
  - (c) Those engaged in domestic service or agriculture,

and which applied only to employers of five or more workmen was valid.

## New York

*Ives v. So. Buffalo Ry. Co.*, 200 N. Y. 271, 94 N. E. 431,  
Ann. Cases 1912 B. 156;

*Jensen v. Southern Pacific Co.*, 215 N. Y. 514, 109 N. E. 600.

(Case subsequently reversed in U. S. Supreme Ct. because law could not validly apply to maritime injury.)

The first compulsory New York statute was held invalid in *Ives v. So. Buffalo R. Co.*, *supra*.

The New York Constitution was then amended, another statute passed, and it was held valid.

The second New York Act (L. 1914, c. 41) was compulsory and its validity was sustained. It applied to 42 different groups of hazardous employments, but excluded the State and all municipal and political subdivisions. Most of these groups included several different kinds of business, and it is safe to say that the law covered all hazardous employments, among others, paving and subway construction, milling, manufacturing of chemicals and explosives, of metals, textile manufacture, laundries, lumbering construction, ship building, railways, machine shops, pulp and paper mills, glass, iron and steel mills, mining, etc.

## Kansas

*Shade v. Ash Grove Lime and Portland Cement Co.*, 92  
Kans. 146, 93 Kans. 257, 139 Pac. 1193, 144 Pac. 249.

This act is elective.

Held that the classifications of the act with reference to business and number of employees were valid. Kansas Laws 1913, Ch. 216, Sec. 2 (Genl. St. Kans. 1915, 5900 reads:

"This act shall apply only to employment in the course of the employer's trade or business, on, in, or about a railway, factory, mine or quarry, electric,

building or engineering work, laundry, natural gas plant, county and municipal work, and all employments wherein a process requiring the use of any dangerous explosive or inflammable materials is carried on, which is conducted for the purpose of business, trade or gain; each of which employments is hereby determined to be especially dangerous, in which from the nature, conditions or means of prosecution of the work therein, extraordinary risk to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable, and as to each of which employments it is deemed necessary to establish a new system of compensation for injuries to workmen."

#### Ohio

*State v. Creamer*, 85 Ohio 349, 97 N. E. 602;

*Fassig v. The State*, 116 N. E. 104;

*Jeffrey Mfg. Co. v. Blagg*, 108 N. E. 465, 235 U. S. 571.

The State of Ohio first enacted a permissive Workmen's Compensation Law applicable to every employer in Ohio having five or more employees. Proper provisions were included authorizing both employer and employee to reject the Act. The law was attacked on the grounds that there was an improper classification, that there was a delegation of judicial power to the board of awards, a denial of a jury trial, that it impaired the obligation of contracts, etc. As will be noted from the above statement, the law applied equally to all employers without respect to the nature of their business provided they had five or more employees and such classification was held to be a reasonable and proper one. Subsequently, the Constitution of Ohio was amended so as to remove any doubt as to the right of the General Assembly to pass a compulsory statute. The wording of this constitutional amendment was very broad. It provided among other things "For the purpose of providing

compensation to workmen and their dependents, for death, injuries or occupational diseases, occasioned in the course of such workman's employment, laws may be passed establishing a State fund to be created by compulsory contribution thereto by employers, etc., etc."

The validity of the Ohio statute has been so affirmed in the case of *Jeffery Manufacturing Company v. Blagg*, 108 N. E. 465, and in the same case in the Supreme Court of the United States reported in 235 U. S. 571. The main attack on the law in the Supreme Court was on the ground of improper classification in that the Ohio law applied only to establishments employing five or more men.

#### Maryland

*Solvuca v. Ryan, etc., Co.*, 101 Atlan. 710:

The Maryland Act specifies a great number of employments which are determined to be extra hazardous, and the Act is made to apply to all of them and to all other extra-hazardous employments. As to all these extra hazardous employments the law is compulsory. The opinion quotes at length from the case of *New York Central R. R. Co. v. White*, 243 U. S. 188. The only discussion in the case upon the proposition of the alleged invalidity of the Act as being violative of the Fourteenth Amendment is the excerpt from the *New York Central R. R. Co. v. White*, *supra*.

#### W. Virginia

*Watts v. Ohio Valley Electric Ry. Co.*, 88 S. E. 659.

The Workmen's Compensation Law of West Virginia is permissive, not compulsory. The West Virginia Act includes the following specified hazardous employments:

1. Coal mines.
2. Paint manufactories, oil refineries, oil and gas wells.



3. Iron and steel mills, blast furnaces, smelters, etc.
4. Sheet and tin plate mills.
5. Foundries, machine shops, car building and repairing, etc.
6. Stamped metal works, can factories.
7. Logging, saw mills, etc.
8. Planing mills, wood pulp, furniture factories, etc.
9. Glass houses, potteries, brick, etc.
10. Printing plants, electrotyping, etc.
11. Woolen mills, cotton mills, knitting mills.
12. Breweries, etc.
13. Slaughter and packing houses, etc.
14. Steam laundries, stamping and embossing works, etc.
15. Steam and other railroads.
16. Street and interurban railroads.
17. Telegraph and telephone companies, water works, gas works, grain elevators, etc.
18. Quarries, stone crushers, gravel pits, mines, cement plants.
19. Match factories, powder mills, etc.
20. Construction work.

All employers choosing to operate under the law are permitted to do so.

The only discussion in this case as to the validity of the Act turns upon an attack upon the law on the ground that it took from the defendant its common law defenses. The Court adheres to its ruling in *De Francesco v. Piney, etc., Co.*, 86 S. E. 777. In that case the discussion is meager. There was an assignment of error challenging the validity of the law, but it was not insisted upon. The Court simply stated that the law was, in its opinion, valid.

### New Jersey

*Sexton v. Newark District Telephone Co.*, 84 N. J. Law, 85, 86 Atlan. 451.

The New Jersey Act (Public Laws 1911, pp. 134 and 763) applies to all employers whether natural persons, partnerships or corporations. (Laws 1911, p. 144.)

It is an elective Act. The statute was attacked upon the ground that it violated the Fourteenth Amendment and impaired the obligation of contracts. However, no question was raised as to any improper classification.

The law was held to be valid.

### Washington

*State ex rel. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 305;

*State v. Mountain Timber Co.*, 135 Pac. 645;

*Mountain Timber Co. v. State*, 243 U. S. 219, 37 Sup. Ct. Rep. 260.

The Washington Act (Laws 1911, c. 74) is compulsory.

Section 2 read as follows:

"Section 2. Enumeration of Extra Hazardous Works.

There is a hazard in all employment, but certain employments have come to be, and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently dangerous hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the State, in the following enumeration, and they are intended to be embraced within the term 'extra hazardous' wherever used in this act, to wit:

Factories, mills and workshops, where machinery is used; foundries, blast furnaces, mines, wells, gas

works, water works, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries, engineering works; logging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads.

If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established shall be, until fixed by the legislation, determined by the department hereinafter created, upon the basis of the relation which this risk involved bears to the risks classified in Section 4."

In *State v. Clausen, supra*, this act was attacked as violative of—

(a) The due process and equal protection clauses of the Fourteenth Amendment.

(b) A provision of the State Constitution forbidding the passage of any law granting to any citizen, class of citizens or corporations, other than municipal, privileges or immunities which upon the same terms shall not belong equally to all citizens or corporations.

(c) A provision of the State Constitution that the right of trial by jury shall remain inviolate.

The classification of extra hazardous employments was not attacked, but the only objection to the act in this respect was that all employees, whether engaged in a hazardous work or not, were included (which question the court did not determine), and that in the creation of a fund for the payment of compensation, the contributions extracted from the numerous industries were diverted to the relief

of a particular class of injured workmen and not the relief of injured workmen generally.

In *Stoll v. Pacific Coast Steamship Co.*, 205 Fed. 160, the United States District Court follows the Washington State courts in sustaining the validity of the Workmen's Compensation Law of that State. An elaborate citation of authorities will be found in this case. The same result was reached in the Circuit Court of Appeals for the Ninth Circuit, in the case of *Raymond v. Chicago, etc., R. R. Co.*, 233 Fed. 239.

#### Arizona

*Inspiration Copper Co. v. Mendez*, 166 Pac. 278.

The Arizona law (Revised Statutes of Arizona 1913, Section 3163, *et seq.*) is compulsory.

All employers in especially dangerous employments are brought within the Act.

The legislature fixed the following employments as especially dangerous:

1. Steam, electric and street railroads.
2. All work in making or using gun powder, dynamite, explosives, etc.
3. Iron and steel construction work.
4. Operation of elevators, hoisting apparatus, etc.
5. Scaffolding work.
6. Construction and operation of electrical work.
7. Telegraph and telephone work.
8. Mines and quarries.
9. Construction and repair of tunnels, etc.
10. All work in mills, shops, yards, plants, etc., where steam, electricity, or any other mechanical power is used to operate machinery.

The act was held valid. There was no particular discussion of the classification feature of the statute.

It is to be noted that Section 7 of Article 18 of the State Constitution required the enactment of an Employers' Liability Law in all hazardous occupations, in mining, smelting, manufacturing, railroad or street railroad transportation, making the employer liable without respect to his fault.

*Arizona Copper Co. v. Hammer*, 39 Sup. Ct. R. 553 (Decided June 9, 1919.)

#### California

*Western Indemnity Co. v. Pillsbury*, 151 Pac. 398;

*Western Metal Supply Co. v. Pillsbury*, 156 Pac. 491.

The case first above cited passes upon the main features of the Act of 1913 (Statutes 1913, p. 279), which is a compulsory law.

The Act included all employments except

1. Casual laborers.
2. Farm, dairy, agricultural, vinicultural, horticultural, stock, poultry and domestic laborers.

A constitutional amendment in California authorized the adoption of a Workmen's Compensation Law.

On the subject of those included in the act, the Court said:

"We have not overlooked the circumstances that the Boynton Act, unlike some of the other statutes to which we have referred, does not limit the newly created scheme of compensation to specially enumerated industries, selected as and declared to be extra hazardous in character. We do not conceive that this difference has any real bearing upon the constitutional questions heretofore discussed. The legislative power to impose the liability upon an em-

ployer who is without fault does not, in the view of the courts which have dealt with this subject, rest upon the consideration that the particular employer is conducting an industry in which injury is more likely to result than in some other; if the burden may be imposed upon all who are conducting industries in which, in the judgment of the legislature, the public welfare requires this measure of protection."

The Act was attacked as class legislation in respect to the classification excepting casuals, farm laborers, etc., but was sustained.

#### Oklahoma

*Adams v. Iten Biscuit Co.*, 162 Pac. 938.

The Oklahoma Act is compulsory as to certain specified industries classed as hazardous employments (Acts 1915, p. 472) to-wit:

"Factories, cotton gins, mills and workshops where machinery is used; printing, electrotyping, photograving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, water works, reduction works, elevators dredges, smelters, power works; laundries operated by power; quarries; engineering works, logging, lumbering, street and interurban railroads not engaged in interstate commerce, buildings being constructed, repaired or demolished, farm building and farm improvements excepted, telegraph, telephone, electric light or power plants or lines, steam heating or power plants, and railroads not engaged in interstate commerce. If there be or arise any hazardous occupation or work other than those hereinabove enumerated, it shall come under this act."

No question as to class legislation was raised, but the right to abolish a trial by jury under a compulsory workmen's compensation act is discussed at length and sustained. Michigan

*Mackin v. Detroit-Timkins Axle Co.*, 156 N. W. 49;

*Grand Rapids Lumber Co. v. Blair*, 157 N. W. 29;

*Wood v. City of Detroit*, 155 N. W. 592.

The Michigan Act is elective.

The act exempted household servants, farm laborers and casual employees, and this was attacked as an improper classification, but the law was sustained.

Massachusetts.

*Ex parte Opinion of Supreme Court Justice*, 209 Mass. 607, 96 N. E. 308;

*Young v. Duncan*, 218 Mass. 346, 106 N. E. 1.

The act is elective and covers all employers except (a) domestic servants, (b) farm laborers, (c) masters and seamen on vessels engaged in interstate and foreign commerce, (d) casuals and (e) probably those subject to the Federal Employers' Liability Act.

The Court said:

"The section is not open to objection as class legislation, or as denying equal protection of the laws. It applies to all employees alike. In this respect it is no more vulnerable than the employers' liability act, which establishes remedies for the benefit of employees, the weekly payment law or many other acts of like nature. (Citing cases.) The act is constitutional and is not open to criticism in the respects urged by the plaintiff."

## Montana

*Lewis and Clark County v. Industrial Accident Board of Montana*, 155 Pac. 268;

*Cunningham v. Northwestern Improvement Co.*, 44 Montana 108, 119 Pac. 554.

In the latter case, it was contended that chapter 96, Laws 1915, was unconstitutional on the ground that it was class legislation, but this contention was denied. The act was elective and included the hazardous employments listed (they fill 1½ pages of print) and include railroads, mines, interurbans, logging, iron and steel manufacture, packing houses, construction work, etc., etc.

*In re Cunningham v. Northwestern Improvement Co.*, *supra*, a fund was created to pay compensation to *miners only*. It was compulsory. The act was held invalid because even though the employee accepted compensation, he could still have a common law action.

Two points raised in the case and decided in favor of the validity of the law were (1) that it was class legislation and (2) that a trial by jury was denied in violation of the State constitution.

This case goes further than any case which we have examined, with the exception of the case of *American Coal Co. v. Allegany Co.*, 128 Md. 564, 98 Atl. 143. Both of these cases, we submit, are distinguishable from the case at bar. They are more fully discussed elsewhere in this brief.

## Wisconsin

*Borgniz v. Falk Company*, 147 Wis. 327; 133 N. W. 209, 224.



This was an elective act and all employees except certain railroad employees and casuals were within its provisions.

It was admitted that the law might be lawfully enacted as to hazardous employments, but objection was made to the inclusion of non-hazardous occupations as an improper classification. The law was sustained.

#### Minnesota.

*Matheson v. The Minnesota, etc., Ry. Co.*, 126 Minn. 286; 148 N. W. 71.

This law is elective and does not apply to casual laborers, domestic servants, farm laborers or those employees of railroad, subject to the federal law. This classification was held to be valid.

#### Kentucky

*State Journal Co. v. Workmen's Compensation Board*, 170 S. W. 1166; L. R. A. 1916 A. 389;

*Greene v. Caldwell*, 186 S. W. 648.

In 1914 the Kentucky General Assembly passed a compensation law, which, under a peculiar provision of the Kentucky Constitution providing that no limitation as to the amount of damages recoverable for death should ever be fixed by law, was held invalid. In 1916 a new law was passed which did not apply to agricultural laborers, domestic servants, and carriers, for which a fixed rule of liability had been set by Congress, and applied only to employers who had five or more employees regularly in their service. This law was attacked on the ground of improper classification and sustained.

### Texas

*Middleton v. Texas Power & Light Co.* 185 S. W. 556; reversing the same case in 178 S. W. 956.

The Court of Civil Appeals had held the Texas Workmen's Compensation Act invalid, and this decision was reversed by the Supreme Court of Texas.

The Act does not apply to employers operating railroads, to domestic servants, farm laborers, to persons having five or less employees, or to cotton gins. The particular vice of this statute was that it was elective as to employers but when the employer had once elected to come within the law his employees were bound to accept its provisions. The Supreme Court of Texas held that this was not an improper classification and did not impair the right to trial by jury.

Affirmed in 249 U. S. 152; 39 Sup. Ct. 227.

### Oregon

*Evanhoff v. State Industrial Accident Commission*, 154 Pac. 107.

The Oregon Elective Compensation Law was sustained in this decision. It applies to those employers engaged in hazardous businesses, but only to the workmen subject to such hazards. The hazardous employments included are factories, mills, workshops, mines, laundries, operated by power, smelters, quarries, street and interurban railroads not engaged in interstate commerce and many others.

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IN THE

# Supreme Court of the United States

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OCTOBER TERM, 1919.

LOWER VEIN COAL COMPANY,	}	No. 573.
<i>Appellant,</i>		
vs.		
INDUSTRIAL BOARD OF INDIANA, ET AL.,		
<i>Appellees.</i>		

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APPEAL FROM THE DISTRICT COURT OF THE  
UNITED STATES.

---

QUESTION INVOLVED.

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In 1915, the General Assembly enacted an elective Workmen's Compensation Act (Act 1915, p. 392).

The original Act left either the employer or employee with the option of rejecting its terms; excepting, however, the Act was made compulsory, under the original provisions

of Section 18, as to municipal corporations, and any political division of the State, and the employees thereof.

In 1917, the original Act was amended and railroad employees engaged in train service were expressly exempted from the provisions thereof.

In 1919 (Acts 1919, p. 158), the General Assembly of the State of Indiana amended Sections 1, 5, 8, 9, 13, 14, 15, 18, 22, 23, 25, 31, 37, 38, 39, 42, 43, 45, 46, 47, 48, 50, 51, 56, 58, 63, 65, 68, 69, 70, 73 and 76, and repealed all laws and parts of laws in conflict with said amendment.

As set out in Appellant's brief, Section 18 of said amended Act of 1919 changed the elective, or permissive system, by extending the compulsory features of the Act to persons, partnerships and corporations engaged in mining coal, and to the employees thereof.

Appellant, by a Bill in Equity, filed in the District Court of the United States for the District of Indiana, sought an injunction enjoining the defendants from enforcing the compulsory features of the Workmen's Compensation Act, upon four grounds, to-wit:

(1) That Section 18, as amended, violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

(2) That it violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." (Article I, Sec. 23, Bill of Rights of the Indiana State Constitution.)



(4) That Amended Section 18 violates Section 21 of the Indiana Bill of Rights, reading as follows: "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered." (Article I, Sec. 21, Indiana Bill of Rights.)

The question presented before the District Court, and now before this Court, is whether Section 18, as amended, and making compulsory the payment of compensation to persons, partnerships and corporations engaged in mining coal, and the employees thereof, is constitutional.

#### CONDENSED STATEMENT OF PLEADINGS.

Plaintiff, in its Bill, alleged that it was a corporation organized under the laws of the State of Indiana, and engaged in mining and marketing coal, and employing five hundred men in its business, in the State of Indiana, and that the contracts for hiring its employees are made within the State of Indiana, and that the defendant, Industrial Board of Indiana, is a Board created by the Workmen's Compensation Law of 1915, and the individual defendants are members of said Board; and that the General Assembly of 1915 enacted a Workmen's Compensation Law, which was amended in 1917, and amended in 1919, as set out in plaintiff's Bill; that the Act of 1915, and as amended in 1917, was a permissive Act, and that plaintiff had elected to reject the provisions of the law of 1915, and conduct its business under the Liability Laws of the State of Indiana, and that said election had never been withdrawn; and that after the amendment of Section 18, and other amend-

ments by the General Assembly of 1919, plaintiff served an additional notice in writing, that it refused to comply with the amendments, particularly Section 18, as amended, because such Section 18, as amended, was unconstitutional and void, as claimed by plaintiff, for the reasons set out, that it deprives plaintiff of its property without due process of law, the equal protection of the law, and that it was in violation of Sections 21 and 23 of the Bill of Rights of the Indiana State Constitution; that defendant claimed that all of the amendments of 1919, including amended Section 18, were constitutional, and purposed carrying out the provisions of said amendments, unless enjoined by the Court.

Plaintiff further averred in said Bill that there had occurred, from time to time in the past, and would, in the future, accidents to its employees, resulting without negligence on plaintiff's part, while employed by plaintiff in the course of their employment, and that claims for compensation for such injuries would be filed by said injured employes, or their dependents, with the Industrial Board of Indiana, and that compensation would be awarded in practically all of said cases; and plaintiff says that it believed that during the remainder of the year 1919, there would be more than twenty-five accidents, for which compensation would be claimed, and that the compensation would exceed twenty-five thousand dollars, and that in the defense of certain claims it would be compelled to expend, in attorneys fees and expenses, five thousand dollars, during the remainder of 1919.

Plaintiff wholly failed to allege how many cases there would be during the year 1919, resulting from its negligence, and whether there would be collected, by way of

damages, in litigation, settlement, or compromise, sums that would exceed twenty-five thousand dollars; and plaintiff wholly failed to allege whether it would expend more than five thousand dollars by way of attorneys fees and expenses, in the settlement and defense of such liability claims during the remainder of the year 1919; and plaintiff wholly failed to allege how much said compensation claims would exceed the cost of liability claims, and whether or not plaintiff would, in fact, be damaged at all.

Plaintiff further alleged in its Bill that the business of mining coal was a hazardous one, and claimed, in such Bill, that many other businesses conducted in the State, in which thousands of men are employed, were more hazardous than the business of mining coal, and many other businesses in which thousands of men are employed annually in the State, which are equally as hazardous as the business of mining coal.

The Bill then sets out the number of injuries for the year ending October 1, 1917, to the year ending October 1, 1918, to employees on steam railroads, in iron and steel industries, manufacturing and machine shops, auto manufacturing and repairing, coal mining, general contractors, furniture manufacturers, car manufacturing and repairing, foundries and glass manufactories, and claimed, in said Bill, that the mining business was fifth in point of hazard.

Said Bill claimed that amended Section 18 was unconstitutional and void, and that the singling out of the coal industry, together with the employees of municipal corporations, and the political divisions of the State, was an unfair, arbitrary and discriminatory classification, not based upon any just or reasonable grounds, and that the

Legislature enacted said law without any fair reason in making said Workmen's Compensation Act compulsory and mandatory on persons, partnerships and corporations engaged in the business of mining coal; and that plaintiff was denied the equal protection of the law, because the law was not equal, or uniform in its operations, and that it imposed onerous burdens upon such business, and deprived plaintiff of its property without due process of law, and that said Act was partial, unreasonable, oppressive, unequal and arbitrary.

Said Bill further alleged that plaintiff's property would be taken by awards made by the Industrial Board, where there was no negligence or fault upon the part of the plaintiff.

The prayer of the Bill was for an injunction after notice, and that said injunction be made perpetual, restraining the defendants and their successors in office, from enforcing, in any manner, the provisions of said Act, as amended.

#### AMENDMENT TO BILL OF COMPLAINT.

Plaintiff, by leave of Court, afterwards amended its Bill, and averred that various corporations, copartnerships and individuals engaged in the business of mining coal, had hundreds of employees who were employed above the ground in clerical work, hauling, carpentering, and similar occupations, and that plaintiff had many of such employees who were not coal miners, and did not dig coal, and that all of said employees are covered by the provisions of Section 18, and if said Section 18 is valid, these employees are entitled to compensation without regard to plaintiff's negligence, for any injuries sustained by them.

It was further averred in said amended Bill that all persons engaged as employes in the actual mining of coal are members of the United Mine Workers of America, which is a labor union, organized and maintained for the protection of its members, and that said United Mine Workers Union employs, in Indiana, attorneys whom it pays by the year to attend to the interests of its members, which attorneys are employed to, and do, prosecute without expense to injured employees or their dependents, all suits for personal injuries, brought by said members, in the State of Indiana; whereas, in other occupations industrial workers have large sums of money to pay, frequently, on a contingent basis, to lawyers representing them in their suits for personal injuries, injured coal miners and their dependents, receive, without abatement, or payment of attorney fees, all damages recovered by them for personal injuries; that persons actually employed in Indiana, in the coal mining business, are paid for their services a higher rate of wages, or compensation, than any other individual worker in Indiana, and that many of them carry policies of insurance protecting themselves and their families against injuries resulting in accident and death.

#### DEFENDANTS' ANSWER.

Defendants, and each of them, separately and severally, for answer to Plaintiff's Amended Bill, averred as follows:

1. They admit all that part of the averments of plaintiff's bill contained in specification One (1) thereof.
2. They admit all that part of the averments of plaintiff's bill contained in specification Two (2) thereof.
3. They aver that the value of matter in dispute in

this cause is speculative, colorable, and is not susceptible of proof and demonstration with certainty, all which appears upon the fact of plaintiff's bill, and from the matters and facts alleged therein with reference to the value of the matter of dispute.

4. They admit all that part of the averments of plaintiff's bill contained in specification Four (4) thereof.

5. They admit all that part of the averments of plaintiff's bill contained in specification Five (5) thereof.

6. They admit all that part of the averments of plaintiff's bill contained in specification Six (6) thereof.

7. They admit all of the averments contained in subdivision seven (7) of plaintiff's bill except that part thereof which avers that the Workmen's Compensation Act of 1915 as amended in 1917 was a permissive Act, and defendants aver that said Act of 1915 and as amended in 1917 was not a permissive Act but was compulsory as to the State of Indiana, the political subdivisions thereof and the municipalities and the employees thereof, and expressly exempted from the provisions thereof casual laborers, farm agricultural laborers, domestic servants and their employers unless such employees and their employers voluntarily elected to be bound by said act, by giving affirmative notice as specified herein to be bound by the specifications of said Act.

8. They admit that the Industrial Board of Indiana claims that said amendatory Act of 1919 is valid and effective, and particularly Section 18, thereof, as amended by said Acts of 1919, that the provisions thereof compel and require all coal mining companies in the State, including the plaintiff, to come under said law as amended, and the

jurisdiction of said Industrial Board, and that defendant Industrial Board of Indiana and each defendant hereto assert that the compulsory features of said Section 18 is a valid law, and assert that it is their intention to assume jurisdiction in all personal injury cases and to administer the provisions of said law including Section 18, as provided in said law as amended unless enjoined from so doing by this Court, but defendants and each of them aver that plaintiff has not rejected the provisions of the Workmen's Compensation Act as amended in 1919 by the General Assembly of Indiana. Defendants and each of them further aver that said act is constitutional and valid and that plaintiff is bound thereby.

9. They aver that as to the matters and facts set out in specification Nine (9) of plaintiff's bill, with reference to accidents which have and will occur in and about plaintiff's mines and the consequent expense of defending claims arising therefrom, defendants and each of them are without knowledge but defendants and each of them aver that the General Assembly of the State of Indiana in enacting the amendatory Act of 1919, and particularly Section 18 thereof, based the classification made in said Section 18 partially upon the following facts, viz.: That many accidents had theretofore occurred in the operation of the coal mines of Indiana, including the mines of plaintiff, which accidents resulted in the death of and injuries to employees working in said mines in the course of and arising out of their employment, and that in many of such cases such employees and defendants had no redress at law, and that in such cases when such employees and defendants were

afforded redress at law, such redress was found by said General Assembly inadequate, expensive and accompanied by vexatious delays, and that the occupation of mining coal had been extremely hazardous and will continue so to be, and that said occupation of coal mining theretofore contained and would continue to contain inherent hazards and dangers not encountered or contained in any other occupation, business or industry carried on in the State of Indiana.

10. Defendants and each of them aver for answer to specification Ten (10) of plaintiff's bill that they admit all the allegations contained in said specification except the averment that there are businesses conducted in the State of Indiana that are more hazardous than that of mining coal, and defendants and each of them aver that the business of mining coal is more hazardous than any other business, occupation or industry carried on and conducted in Indiana, in this, viz.: That in proportion to the men employed in the business of mining coal and in the operation of coal mines, the percentage of casualties is greater than in any other business, industry or occupation; that the percentage of fatalities occurring in the operation of coal mines is greater than in any other business, occupation or industry conducted therein; that the nature and extent of injuries received by employees engaged in such business of mining coal are more serious, severe and aggravated than those received by employees in other business, industries and occupations; that the hazards and dangers inherent in the occupation of coal mines are more numerous, diverse and varied than any other occupation in Indiana. And defendants and each of them aver that the general



assembly of 1919 based the classification in part upon the foregoing facts alleged in this specification.

10½. Defendants and each of them say for answer to specification 10½ that in the business of mining coal some of the employees engaged therein are employed above ground in the performance of duties which are necessary for the practical operation of said mines, and are not engaged in the mining of coal, but defendants aver that the work performed by such employees above the ground and of those employees that mine coal are all a part of and necessary to the practical and successful operation of said mines and the marketing of the product thereof. That the per cent of employees whose duties require them to work above the ground in said mines is small, and defendants are informed and believe will not exceed on an average of ten per cent of the total employees in the business of mining coal. And defendants further aver that in the year of 1918 more than one hundred casualties occurred among the employees of coal mines in the State of Indiana whose duties require them to work above the ground, ten of which were fatalities, and defendants aver that the duties of a large per cent of the employees that work on and above the ground as aforesaid are such as to make such employment dangerous and hazardous. Defendants further aver that all persons engaged as employees in mining coal, except Company men, are members of the United Mine Workers of America, and that all the employees of the bituminous mines, including plaintiff's, form and comprise District No. 11 of the United Mine Workers of America, which employees number approximately Thirty Thousand (30,000) men, and that said District No. 11, United Mine

Workers of America, employ attorneys at an annual salary to handle and prosecute personal injury claims and suits and compensation claims, and represent the interest of said District No. 11 in legal matters, all from funds voluntarily paid by each and all of said employees; that prior to the employment of said attorneys practically all of the owners and operators of mines in the State of Indiana were and are now organized into an association known and designated as the Indiana Coal Operators' Association, and that such association now employs and for many years has employed attorneys to look after the interests of the operators, including matters of legislation; that after the passage of the Workmen's Compensation Act as amended by the General Assembly of Indiana in 1919, such association employed attorneys to test the validity of said act, and pursuant to such employment, authorization and instructions, plaintiff's amended bill was filed for such purpose. Defendants and each of them further aver as they are informed and believe, that approximately ninety-two (92) persons, firms and corporations engaged in the operations of a majority of the coal mines in the State are members of another reciprocal insurance organization commonly known and designated as the Indiana Operators Reciprocal Organization, which organization employs and retains and has for many years employed and retained a manager, assistant manager, claim adjusters, investigators and numerous attorneys for the purpose of defending suits and securing releasee from liability of personal injury claims of miners injured in the mines insured by said Reciprocal Organization, including the mines of this plaintiff, and said defendants further aver that the several persons,

firms and corporations composing said reciprocal insurance organization have rejected the provisions of the Workmen's Compensation Act of 1915, and as amended in 1917, and were not operating such mines under the provisions of said act at the time of the enactment of said Section 18 of said law as amended in 1919, and defendants and each of them further aver that if said Section 18 as amended in 1919 is declared to be unconstitutional and void, that the members of said organization will continue to operate their said mines under the liability laws of the state and will reject the provisions of the Workmen's Compensation Law, and that the employees and dependents thereof will thereby be deprived of the benefits of the Workmen's Compensation Laws of Indiana, and be subjected to the delays, expenses, inadequate settlements, and vexations incident to the collection and attempted collection of damages, and in many cases said employees and dependents under said liability laws will not be able to establish their causes of actions in the courts and will be entirely defeated and without any remedy or redress and will become the objects of charity. Defendants and each of them further aver that the allegation in plaintiff's amended bill in said specification 10½ thereof, that persons employed in Indiana in mining coal are paid a higher rate of wages than any other industrial workers in Indiana is based upon statistics for the period of world war, during which time the coal mines of Indiana, including plaintiff, operated full time and full capacity, which resulted in an abnormal increase in wages, but defendants aver that prior to said war period and subsequent thereto that the earnings of the miners were and are materially less than during said war period, and

that the earnings of coal miners are now materially less than many industrial workers.

11. They aver in answer to specification Eleven (11) of plaintiff's bill that Section 18 of the Compensation Law of Indiana as amended in 1919 is constitutional and valid for the reasons following, to-wit:

(a) The General Assembly of Indiana had the power under the Fourteenth Amendment of the United States Constitution to make the classification as specified in Section 18 as amended in the exercise of its police power.

(b) That the classification as adopted by the Legislature as amended in 1919 is founded upon reasonable basis and does not offend as against the equal protection clause of said Fourteenth Amendment.

(c) The classification made by the Indiana General Assembly in Section 18 as amended in 1919 should be sustained upon the following facts which can have reasonably been conceived to have existed in the State of Indiana and in fact did exist at the time of the enactment of said Section, viz.:

That at said time there were in operation in the State of Indiana approximately Two Hundred Thirty-nine (239) coal mines employing approximately Thirty Thousand (30,000) men. That said mines in the main were conducted and operated by means of shafts sunk from the top of the ground to the vein of coal operated, and that over the top of said shafts tipples were built and constructed of iron and steel about one hundred feet high in which were constructed and built, screens, shakers, crushers, dumps and chutes so as to convey coal down to the railroad cars underneath. Railroad tracks were constructed in, about

and around said tipples; engine houses, boiler houses, wash houses, blacksmith shops, and other houses were built close to said tipples, and that in said engine houses there were constructed mechanical apparatus, including cylindrical drums, around which were attached wire rope for hoisting and lowering said cage from the top of said tipples to the bottom of said shafts, and large dynamos were built, constructed and operated which generated electricity of high and dangerous voltage for the operation of motor cars and mining machines in said mines, and from the bottom of said shafts there were cut, dug and driven entries, cross entries and air courses, and on the bottom thereof there was laid trackage ways which followed said seams and veins of coal up and down grades of various degrees of incline and decline. That over said veins and seams were roofs of limestone, sandstone, slate and other substances, which roofs were filled with slits and faults which made said roofs liable to fall at any time without notice or warning, and that said roofs were supported by timbers, props, caps and cross bars; that off of said entries and cross entries there were work rooms several feet apart in which miners were digging and loading coal, and that in certain mines commonly called and designated machine mines, large mining machines would undercut the coal, which machines were propelled by means of electricity of high and dangerous voltage supplied by means of uninsulated copper wires strung along said entries and air courses, and that after said rooms and faces of said entries were undercut, holes were drilled in said coal and powder placed therein and said coal shot and blasted down, and the loaders would load the same in coal cars which were propelled by means

of mules and ponderous electric motors propelled by means of trolley wires strung along near the top of said entries, which entries ranged from seven to fourteen feet in width, and were filled with timbers, props, gob, loose slate, debris, trolley wires, machine wires and other obstructions that endangered the lives and limbs of said mule drivers, motor-men and trip riders, and that said veins of coal, of which five veins were working in the bituminous fields and at least two veins were working in the block coal fields of Indiana, emitted dangerous and deadly noxious and inflammable gases which would collect in pockets in abandoned workings and other workings, and which gases frequently ignited by the lights and lamps of miners thereby causing explosions and great destruction of health and lives of numerous employees, and many of said mines contained what is commonly known as black damp that insidiously overcame and asphyxiated miners therein. That in the operation of said mines there were many and divers different ways of work and occupations and that men were injured, wounded and killed in many various ways, both below and above the ground, to-wit: on and in and on account of railroad cars, screens, shakers, engine rooms, boiler rooms, pulleys, belts, dynamos, wash houses, scales, blacksmith shops, tipples, cages, bottoms of shafts, entries, cross entries, trackways, haulage-ways, switches, frogs, uninsulated machine wires, uninsulated trolley wires, trimming flats, motor cars, coal cars, mules, mule trips, mining machines, cutter bars, falls from roof, falls from loose coal, electrocution, falling down shafts, black damp, white damp, marsh gas, dust explosions, windy shots, shots, powder explosions, falling timbers, rubbing ribs of coal, coupling cars, falling from

tail chains and many other ways and manners both accidentally and through the carelessness, negligence, fault and omission of duty of other persons and co-employees, all of which happened prior to the meeting of the General Assembly of the State of Indiana of 1919, and which will continue to happen, and that owing to the peculiar nature of the ways and methods of mining coal in said coal mines in Indiana, said business was, is and will continue to be more hazardous, and accidents have and will occur in more varied ways than in any other business, industry or occupation, and that practically all of the other industries, and business of the state, except the operators of coal mines, had voluntarily accepted the provisions of the Workmen's Compensation Law, and were paying compensation for injuries and that said coal industry was the only industry in Indiana that was refusing to avail itself of the provisions of the workmen's Compensation Law of Indiana and that a large majority of the coal operators and persons, firms and corporations operating said mines had elected to reject the provisions of said Act, and the only other industry or occupation that was not operating under the provisions of said Act were the railroads, which, at the time of the meeting of the General Assembly of 1919 were being controlled and operated by the United States Government, and that the United States Railroad Administration and the employees thereof were subject to an act of Congress of the United States for the year of 1916 entitled "An Act to provide compensation for the employees of the United States suffering injuries while in the performance of their duties, and for no other purpose." And that the employees of said railroads so working for the United States Railroad

Administration were not military employees but civil employees of the United States within the meaning and terms of said act of Congress.

Defendants and each of them further aver that said act is not invalid because it violates Section 23 of Article I of the Bill of Rights of the Constitution of the State of Indiana as charged in subdivision 2 of specification 11 of plaintiff's bill, for the following reasons and each of them, namely:

(a) Said act is a fair and reasonable classification, and the Legislature in the exercise of its police power was not limited by the Indiana Constitution from making the classification named in the act.

(b) That the classification is not unjustly or unreasonably discriminatory against plaintiff and other persons, firms, partnerships and corporations engaged in the business of mining coal, and in favor of other equally hazardous and dangerous businesses, as alleged, but defendants and each of them aver that in the exercise of its police power the classification made within said act was legitimate, reasonable and constitutional.

(c) Defendants and each of them further aver that the classification fixed by said act is just and reasonable, and founded upon conditions and facts justifying the classification.

Defendants and each of them aver that said act is valid and does not violate Section 21, Article I, of the Bill of Rights of the Indiana Constitution, as alleged in plaintiff's bill, for the following reasons, to-wit:

(a) Because the Legislature had the constitutional right in the exercise of its police power to require the



plaintiff to pay compensation to its employees pursuant to awards made by the Industrial Board of Indiana in cases where there was no negligence or fault on the part of the plaintiff, even though other persons, firms and corporations would not be subjected to the same liability because the classification contained in the act is supported upon a reasonable basis.

(b) Because in the exercise of its police power the Legislature has the right to require plaintiff to pay compensation to its employees pursuant to the awards of the Industrial Board as provided in said act, regardless of whether said injuries were proximately caused by the negligence of plaintiff.

12. The defendants and each of them aver that as to each and every averment of plaintiff's bill, not herein specifically admitted, denied or explained, defendants say that they and each of them are without knowledge.

13. Defendants and each of them aver that inasmuch therefore that plaintiff is not entitled to the relief prayed for in its bill, and that said act is valid and constitutional, as to the United States Constitution and as to the Indiana Constitution, defendants and each of them prayed that the injunction as prayed for be in all things denied, and that the interlocutory injunction be in all things dissolved, and that said Section 18 as amended be declared constitutional and valid and not in violation of the Constitution of the United States and the Constitution of the State of Indiana, and for such other and further relief in the premises as may be required by equity and good conscience.

**BRIEF OF ARGUMENT.  
POINTS AND AUTHORITIES.**

1. A Legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole, and the courts will not lightly hold that an act duly passed by the Legislature, was one in the enactment of which it has transcended its power.

Atchison, Topeka R. R. Co. v. Mathews, 174  
U. S. 104.

2. So long as legislation applies impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances, both in privilege conferred and liability imposed, it cannot be said to be violative of the equal protection clause of the Fourteenth Amendment.

Magoun v. The Illinois Trust and Savings Bank,  
170 U. S. 293.

3. That the business of coal mining is attended with dangers that render it the proper subject of regulation by the State, in the exercise of the police power, is entirely settled.

Plymouth Coal Co. v. Pennsylvania, 232 U. S.  
540.

4. It is the province of State courts to construe and interpret State statutes when called upon to do so, as to

whether they violate their State Constitution, and such construction, adopted by the State courts, will be the one adopted by the Federal courts.

L. and N. R. R. Co. v. Garrett, 231 U. S. 298;  
 Pelton v. National Bank, 101 U. S. 143;  
 Michigan Central Ry. Co. v. Powers, 201 U. S.  
 245.

5. The Indiana Legislature (Burns R. S., 1914, Sec. 8624a; Acts 1911, p. 658, in force April 1, 1911) provided, among other things, "That the business of mining coal is hereby declared a dangerous occupation, industry and business."

6. The Indiana Workmen's Compensation Act is declared to be, in the title, "An Act to promote the prevention of industrial accidents," etc.; Acts 1915, p. 392, in force March 8, 1915.

7. The police power reserved in the State is as broad and plenary as the taxing power.

Mountain Timber Co. v. Washington, 243 U. S.  
 219;  
 Kidd v. Pearson, 128 U. S. 1.

The Supreme Court of the State of Indiana has held the power of taxation to be inherent in the State, and a legislative power limited only by the provisions of the Indiana State Constitution itself.

State v. Halter, 149 Ind. 292.

8. It is competent and within the power of the Indiana

Legislature, under the Indiana State Constitution, in the exercise of police power, to take steps for the protection of the lives and limbs of all persons who may be exposed to dangerous agencies in the hands of others, and enact classifying legislation on the basis of peculiar hazards in a given industry, and the Indiana Employers' Liability Act (Acts of 1893, p. 294) was upheld because a particular classification of the Act was made on the basis of peculiar hazards in railroading, and because it applied equally to all employers and employees within the class, and, hence, violated neither Section 23 of the Indiana Bill of Rights nor the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Indianapolis Union Ry. Co. v. Hulihan, 157 Ind. 494.

9. The enforcement of regulations enacted in the proper exercise of the police power of the State cannot be resisted as the taking of private property without compensation, in violation of Section 21 of the Indiana Bill of Rights.

Stone v. Fritts, 169 Ind. 361;  
 State v. Richcreek, 167 Ind. 217;  
 Levy v. State, 161 Ind. 251;  
 City v. West, 9 Ind. 74.

10. No existing State compensation law has ever been declared by the Supreme Court of the United States to be

in violation of the due process, or equal protection clauses of the Fourteenth Amendment.

N. Y. Cent. R. R. Co. v. White, 243 U. S. 188;

Hawkins v. Bleakley, 243 U. S. 210;

Mountain Timber Co. v. Washington, 243 U. S. 219;

Middleton v. Texas Power & Light Co., 249 U. S. 152;

Arizona Copper Co. v. Hammer, 250 U. S. 400.

11. A liberal construction of statutes and a strict construction of constitutional provisions are a safe and reasonable judicial policy.

Walcott v. Wigton, 7 Ind. 44;

Lafayette v. Geiger, 34 Ind. 185.

12. The Indiana State Constitution is not a grant of power to the Legislature, but a limitation of its general power.

Hovey v. Carson, 149 Ind. 395.

13. A statute will not be held unconstitutional merely because it is unjust and repugnant to general principles of justice, liberty, or rights not expressed in the Indiana State Constitution.

Craig v. Western Paving Co., 143 Ind. 358;

State v. Gearhart, 145 Ind. 439;

Zapf v. State, 145 Ind. 696;

Grelle v. Wright, 145 Ind. 699.

14. Courts may not declare an act void merely because, in their opinion, it is opposed to the spirit supposed to pervade the Constitution.

Horning v. Wendell, 57 Ind. 171;  
Logansport v. Seybold, 59 Ind. 225.

15. The courts will presume in favor of the constitutionality of a law until the contrary clearly appears.

State v. Cooper, 5 Blackford 258;  
Stocking v. State, 7 Ind. 326;  
Brown v. Buzan, 24 Ind. 194;  
Groesch v. State, 43 Ind. 547;  
Lucas v. Beard, 44 Ind. 524;  
State v. Denny, 118 Ind. 382.

16. In determining whether a statute is constitutional it is the duty of the courts to give such construction to it, if possible, as will uphold the act.

Main v. State, 4 Ind. 342;  
Aker v. State, 5 Ind. 193;  
Hovey v. Carson, 119 Ind. 395.

17. A statute will not be declared unconstitutional unless no doubt exists on the question.

Clore v. State, 60 Ind. 17;  
Parker v. State, 33 Ind. 178;  
Smith v. Indianapolis Ry. Co., 158 Ind. 425.

18. The power of the courts to declare a statute of the State unconstitutional is a high one, and is never exercised

in doubtful cases. To doubt is to resolve in favor of the constitutionality of the law.

*Bush v. the City of Indianapolis*, 120 Ind. 476.

19. Where two constructions of a State statute are open, that is to be adopted which preserves the constitutionality of the act.

*C., C., C. & St. L. Ry. Co. v. Backus*, 133 Ind. 513;

*State v. Lowry*, 166 Ind. 372.

20. The Supreme Court of Indiana has held that Article I, Section 23, of the Bill of Rights of the Indiana State Constitution, is substantially the same as the privileges and immunities clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in upholding the validity of the bulk sales statute.

In the case of *Hirth, Krause Co. v. Cohen*, 177 Ind. 10, the court said:

"The provisions of Article I, Section 23, of our Constitution, so far as the question here involved is concerned, are substantially the same as the privileges and immunities clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and as the Act from which the Act in question was copied has been held by the Supreme Court of the United States not violative of the Fourteenth Amendment, we are constrained to hold that it does not violate the privileges and immunities section of our Constitution, but, on the other hand, is a proper exercise of the police power of the State."

21. The Indiana Legislature has, on many different occasions, exercised its police power by enacting legislation relating solely to the business of coal mining, and, in every instance, such legislation has been upheld when attacked.

State v. Barrett, 172 Ind. 169;  
Barrett v. State, 229 U. S. 26;  
Maule Coal Co. v. Partingheimer, 155 Ind. 100;  
Davis Coal Co. v. Polland, 158 Ind. 607;  
Booth v. State, 179 Ind. 405;  
Booth v. State, 59 Law Ed. U. S. 1011;  
Warren v. Sohn, 112 Ind. 213.

22. The Employers' Liability Act of Indiana (Acts 1911, p. 145) applying only to persons, firms and corporations employing five or more persons, was upheld.

Vandalia Ry. Co. v. Stillwell, 181 Ind. 267;  
Terre Haute Ry. v. Weddle, 183 Ind. 305;  
Kingan & Co. v. Clements, 184 Ind. 213.



## ARGUMENT.

## LEGAL PROPOSITIONS.

Plaintiff contends that Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana, for the year 1918, is unconstitutional, for the reason that compelling coal mining companies to operate under a law, and permitting other business corporations, firms and individuals to reject its provisions, is a discriminatory classification, founded on no differences in the businesses, and that the facts adduced by the evidence in those clauses support this contention.

For the purpose of sustaining this contention plaintiff has alleged, in its Bill, that certain industries are much more hazardous than the mining of coal, and, on the trial, introduced evidence presumably for the purpose of sustaining the facts alleged in the Bill.

The issue of facts tendered by plaintiff is one of comparative hazard, and also the fact that the United Mine Workers are a favored class because they employ attorneys at an annual salary, to represent the membership in personal injury litigation and hearings before the Industrial Board of Indiana, and that certain employees of the plaintiff, and other coal companies, are persons who do not dig coal, but work above the ground, which they claim are arbitrarily brought under the provisions of Section 18 as amended.

No other issue of fact whatever has been tendered by the plaintiff in support of this contention, and no other

reason whatever has been advanced, or suggested by it, in support of this contention.

It is the contention of the defendants that the suggested bases of facts set out in the Brief of Plaintiff, and urged by it in support of its contention that the law is invalid, unless they are sufficient under the law, to overturn the Act, it must be upheld, unless, under the law, the courts find, outside the evidence, some reason other than as assigned by plaintiff for holding Section 18 invalid.

The burden of proof is upon the plaintiff. The presumption is in favor of the validity of the law, and that presumption must be overcome by real, tangible evidence. Mere criticism that it does not extend to other classes of employment does not, and cannot, amount to a constitutional objection.

Plaintiff has chosen the issue of hazard as the chief test of the validity of the law, and on page 38 of Appellant's Brief, has admitted and conceded that it is within the constitutional authority of the Indiana Legislature to enact a Workmen's Compensation Act, in which a fair and reasonable classification is made, and uses the following language:

"While admitting that it is within the constitutional authority of a State Legislature to pass a Workman's Compensation Act, in which a fair and reasonable classification is made, the question here to be considered is whether the Legislature may enact a general compensation law applicable to all employers and employees within the State, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service, to whom it does not apply at all."

Appellant having conceded that it is within the power of the Indiana General Assembly to enact a compulsory compensation law, provided that the Act is fair and reasonable in its classifications, disposes of its fourth objection, that it violates Section 21 of the Indiana Bill of Rights, reading as follows:

“No man’s particular services shall be demanded without just compensation. No man’s property shall be taken by law without just compensation; nor except in the case of the State, without such compensation first assessed and tendered.”

In other words, plaintiff has conceded that Section 18, as amended, does not interfere with its rights under the Indiana Constitution, as to due process of law.

We respectfully cite that in Appellant’s Brief, on page 25, we find this statement:

“These figures demonstrate that even conceding that hazard is the proper test to determine whether a fair and reasonable classification has been made (which we do not admit) that the risks ordinarily incident to other occupations are much greater than those prevailing in the mining of coal.”

Having tendered hazard as one of the tests of the validity of Section 18 of the Amended Act, and having, in the above quotation, not admitting that hazard is the test, we respectfully wish to inquire, What, then, is the proper test?

If the test is some other than that of hazard, what facts have been proven by the plaintiff, in support of some test other than that of hazard, from which the courts can ad-

judge the law to be unfair, unreasonable, arbitrary and discriminatory against the plaintiff? Does the naked showing of a classification furnish a proper test? If not, and if as plaintiff says, hazard is not a proper test, then the defendants contend that the question at issue must be determined from consideration other than the evidence adduced by plaintiff in support of its contention.

This leaves no other test except the issues presented by Plaintiff's Amended Bill, set out under Section 10½, p. 44 of the Transcript of Record, and reading as follows:

"Plaintiff alleges that the various corporations, co-partnerships and individuals engaged in the coal mining business in the State of Indiana, have hundreds of employees who are not engaged in the hazardous part of such business, but are employed above the ground, in clerical work, hauling, carpentering, and other similar occupations; that plaintiff, itself, has many employees so engaged, and that said employees last referred to, are not coal miners, and do not dig coal, and that all of said employees are, as plaintiff believes, covered by the provisions of Section 18, as amended; that plaintiff is compelled, if said Section 18, as amended, is a valid and effective law, to pay compensation to all of such employees last specifically referred to, without regard to its negligence in the premises, while other persons, co-partnerships and corporations engaged in other businesses, are not compelled to do so.

"Plaintiff avers that practically without exception, all persons engaged as employees in the actual mining of coal, in the State of Indiana, are members

of the United Mine Workers of America, which is a labor union organized and maintained for the protection of its members; that said United Mine Workers Union employs, in Indiana, attorneys whom it pays by the year to attend to the interests of its members, and which attorneys are, by said union, employed to, and do, prosecute, without expense to injured employees, or their dependents, all suits for personal injuries brought by said members in the State of Indiana, and that, whereas in other occupations, the industrial workers have large sums of money to pay, frequently on a contingent basis, to lawyers prosecuting their suits for personal injuries, injured coal miners, and their dependents, receive, without abatement, or payment of attorney's fees, all damages recovered by them for personal injuries.

“Plaintiff further avers that the persons actually employed in Indiana in the mining of coal, are paid for their services a higher rate of wages, or compensation, than any other industrial workers in Indiana, and that they are able, and many of them do, carry policies of insurance, protecting themselves and their families against the injuries resulting in accident and death.

“Said act is invalid because it includes within its terms all employees of coal mining companies, whether engaged in the hazardous part of the coal mining business, or not, and is mandatory as to all such employees, and as to the employers of all such employees; whereas, as to employees of other private business corporations, co-partnerships and individ-

nals, it is not mandatory as to those engaged in the non-hazardous part of such employments, but is permissive only, and excludes from its operation railroad employees engaged in train service."

(a) Briefly stated, plaintiff contends that Section 18 is unconstitutional by reason of a certain contract of employment between the United Mine Workers of America and their attorneys.

(b) That the persons actually employed in Indiana, in mining coal, are paid for their services a higher rate of wages, or compensation, than any other industrial workers in Indiana, and they are able, and many of them do, carry policies of insurance protecting themselves and their families against the injuries resulting in accident and death.

(c) That said Act is invalid because it includes within its terms all the employees of coal mining companies, whether engaged in the hazardous part of the coal mining business or not.

In answer to the objection that the United Mine Workers employ attorneys, and that they are a favored class, we call the attention of the court to the fact that appellant's counsel have cited no authorities showing that the constitutionality of an act may be dependent upon any contracts between client and attorney.

Plaintiff's allegation that the persons employed in the mining of coal are paid for services a higher rate of wages than the employees in any other industry in Indiana, is not borne out by any evidence in the record, because plaintiff never introduced any evidence as to the wages of other industrial employees in the State of Indiana, and that the allegation is wholly unsupported by any evidence introduced at the trial of the cause.

As to proposition "c", that there are certain employees not engaged in the hazardous part of the coal mining business, plaintiff has failed to demonstrate such charge, and we respectfully call attention to the Tables, Nos. 170 and 171, p. 90, of Transcript of Record, as follows:

170 "Table of Accidents No. 1.

Arranged according to occupation of the injured party, the fatal, permanent, serious and slight accidents being shown separately.

Occupation of Injured Party.	Fatal.	Perma- nent.	Serious.	Slight.	Total.
Miners.....	42	1	103	315	461
Machine runners.....	2		24	52	78
Machine helpers.....	2		14	36	52
Motormen.....	3		13	37	53
Drivers.....	12		80	261	353
Roadmen.....	1		5	26	32
Jerry men.....	15		20	77	112
Trappers.....	2		8	14	24
Cagers.....			15	25	40
Pumpers.....	1		5	4	10
Electricians.....	2		1	14	17
Trip riders.....	7		36	91	134
Car couplers.....			9	19	28
Bratticemen.....			3	2	5
Boss drivers.....	1		1	6	8
171.					
Mine bosses.....	3		2	4	9
Room bosses.....			1	3	4
Fire bosses.....			1	3	4
Superintendents.....			1	1	2
Shot firers.....	9		14	11	34
Engineers and firemen.....			2	3	5
Flat trimmers.....	1		3	16	20
Timbermen.....	4		10	19	33
Weighman.....				2	2
Top hands.....	6		9	30	45
Top bosses.....	1		1	2	4
Blacksmiths.....			1	8	9
Miscellaneous.....			9	4	13
Totals.....	114	1	391	1,805	1,591

"That the figures in the above table show the reports of accidents to the Mining Department and the Industrial Board; that these reports are from mines employing ten or more people."

These tables demonstrate that there were injuries as follows: To top men: pumpers, 10; electricians, 17; engineers and firemen, 5; weighmen, 2; top hands, 45; top bosses, 4; blacksmiths, 9; making a total of 92 injuries; and if hazard is a test, such figures, or statistics, might have been considered by the Legislature in enacting Section 18.

The clause of the Fourteenth Amendment of the Constitution of the United States, especially invoked, is that which prohibits a State denying to any citizen the equal protection of the law. Plaintiff contends that this clause has been violated. What satisfies this equality? Under what principles of law is this question to be determined, and from what point of view must the court consider the facts? What must be shown by one who asserts the inequality of the legislative enactment? What test is there of reasonableness, or unreasonableness of the classification, under the facts adduced by the evidence in this case?

It is the contention of the defendants that a consideration of these questions is necessary to a just determination of the issues in this case, and that the answers are to be found in the cases involving the discussion of the main question, namely: Is the Act open to the criticism that it is unjustly discriminatory?

We would call the Court's attention to the case of *Plymouth Coal Co. v. Pennsylvania* (232 U. S. 531). This was a case involving the constitutionality of a section of the Anthracite Mining Laws of the State of Pennsylvania,



being Section 10 of Article III of the Act of June 2, 1891, in which the State Legislature of Pennsylvania, acting under its police power, made certain provisions that were obligatory upon the owners of adjoining coal properties, to leave, or cause to be left a pillar of coal in each seam, or vein of coal worked by them, along the line of the adjoining property, of such width, taken in connection with the pillar to be left by the adjoining property owner, would be a sufficient barrier for the safety of employees of each mine, in case the other should be abandoned and allowed to fill with water, etc.

The Court, in that case said:

“That the business of mining coal is attended with danger that renders it the proper subject of regulation by the State, in the exercise of the police power, is entirely settled.”

The Court again said:

“We may once more repeat what has often been said, that one who would strike down a State statute as violative of the Federal Constitution, must show that he is within the class with respect to whom the Act is unconstitutional, and must show that the alleged unconstitutional feature injures him, and so operates as to deprive him of rights protected by the Federal Constitution.”

So, in the case at bar, plaintiff has alleged in its Bill certain facts assuming to make hazard a test, and, as we have pointed out, has then admitted that hazard is not the

test; and has failed to prove any other allegations respecting any other issues than that of hazard.

The Supreme Court of the United States, in the case of *Atchison, Topeka R. R. Co. v. Matthews*, 174 U. S. 104, used the following language:

"It is also a maxim of constitutional law that a Legislature is presumed to have acted within constitutional limits upon full knowledge of the facts, and for the purpose of promoting the interests of the people as a whole, and courts will not lightly hold that an Act duly passed by a Legislature, was one in the enactment of which it has transcended its power."

The Supreme Court of the United States also, in the case of *Magoun v. Illinois Trust and Savings Bank*, 170 U. S. 293, in discussing the equality clause of the Fourteenth Amendment to the Constitution of the United States, used the following language:

"What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privilege con-

ferred and the liabilities imposed. Similar citations could be multiplied, but what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principles they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule prescribes no rigid equality, and permits to the discretion and wisdom of the State a wide latitude, as far as interference by this Court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County v. Kimball*, 102 U. S. 691, that this Court is not a harbor in which can be found a refuge from ill advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional validity.'

The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be of a different kind of corporation than B, it may subject A to a different rule of responsibility to servants than B."

In *Arizona Employers' Liability cases*, 250 U. S. 419, Mr. Justice Pitney, in delivering the opinion of the Court, used the following language:

"Some of the arguments submitted to us assail the wisdom and policy of the Act because of its novelty, because of its one sided effect in depriving the employer of defenses, while giving him (as is said) nothing in return, leaving damages unlimited and giving to the employee the option of several remedies, as tending not to obviate, but to promote, litigation, as pregnant of danger to the industries of the State. With such considerations this Court cannot concern itself. Novelty is not a constitutional objection. Since, under constitutional forms of government each State may have a legislative body endowed with authority to change the law. In what respects it shall be changed, and to what extent, is, in the main, confided to the several states, and it is to be presumed that their Legislatures, being chosen by the people, understand and correctly appreciate their needs. The States are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment, and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts."

Applying the principles of law above cited to the facts adduced by the evidence in this case, it is the contention of the defendants that Section 18 is not an unjust and arbitrary discrimination against the plaintiff. The law does not prohibit legislation which is limited, either in the object

to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and like conditions, both in the privilege conferred and the liabilities imposed and that such classification may be made with reference to the coal industry, is not an open question.

Plaintiff does not contend, and has not proven that it is discriminated against, as against any other competitor engaged in the coal mining business in the State of Indiana. All persons, firms, partnerships and corporations are treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed.

The Workmen's Compensation Act relieves plaintiff as it does every other person, firm and corporation, from being sued under the common law, or any liability law. All are treated alike, and all have this privilege conferred upon them.

On the other hand, plaintiff and every other mining company, person and individual engaged in the coal business in the State of Indiana, are treated with the same provisions, and, so far as the Indiana Workmen's Compensation Law is concerned, competition is absolutely fair between them.

And so, in making classifications, the Legislature had a right to deal, as it has often done in Indiana, with the coal industry as a class by itself. It is perfectly obvious that the coal industry as a class, does not compete with any other industry, as a class. All the competition is by and between the different persons, firms, partnerships and corporations engaged in the coal mining business.

As set out in Appendix A of this Brief, it can be readily seen that the coal industry is an industry in which the State has provided an inspector, and that the State, on various occasions, and in many ways, in exercising its police power, has dealt with this industry because it concerns the safety, peace, well being, health, life and limb of a large portion of the citizens and employees engaged in the coal business, numbering, according to the evidence, in a sum approximating 30,000 men.

Each of these various enactments are special in their character, and discrimination has often been made by singling out the industry to the exclusion of all other industries, and yet, in every case where these special laws have been attacked upon constitutional grounds, the Supreme Court of Indiana has sustained them, without a single exception.

The Indiana Legislature (Sec. 5471, R. S. 1881) provided for the giving of miners and other persons employed in and about coal mines a prior lien on the mining property, for work and labor, and the land owners a prior lien for royalty, and in the case of *Warren et al. v. Sohn et al.*, 112 Ind. 213, the Supreme Court, in upholding the validity of such legislation, said:

"Appellant's counsel claim that the statutory provisions heretofore quoted are in conflict with Section 23 of Article I of our State Constitution, which declares 'that the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which by their terms shall not equally belong to all citizens. Counsel further claim that such statutory provisions contravenes so much of Section 1 of

Article XIV, of the Federal Constitution, as declares in effect, that no State shall deny any person within its jurisdiction the equal protection of the law.'

"We cannot see, however, that the statutory provisions quoted are in conflict with either one of the declarations of our fundamental law, State or Federal, cited and relied upon by appellant's counsel. Certainly it cannot be said, with any degree of legal accuracy, that these statutory provisions denied to any person within the jurisdiction of this State, in any manner, or to any extent, the equal protection of the law. Nor can it be correctly said, we think, that the General Assembly can, or, by the enactment of such statutory provisions, has granted any citizen, or class of citizens, privileges or immunities which, upon the same terms, would equally belong to all citizens.

"We do not doubt that if appellant, or any one or more of them, had performed work and labor in and about the mortgagor's coal mines, they might have acquired liens under the statutory provisions quoted, in the same manner, and upon the same terms as the appellees acquired their liens, and of equal priority therewith.

"As applied to the facts of this case, as found by the trial court, we are of the opinion that the statutory provisions, as above quoted, are not in contravention or in conflict with our fundamental laws, State and Federal, and are a constitutional and valid expression of the legislative will upon the subject of such statutory provisions."

This was a statute that gave only miners the right to

have liens, under the provisions of the law, and as it treated all coal companies and owners alike, under like circumstances, both in privileges conferred and liabilities imposed, it was not held to be in contravention of the Indiana Bill of Rights, or of the Fourteenth Amendment.

In the case of *Davis Coal Co. v. Polland*, decided in 158 Ind. 607, the Coal Mining Act was attacked on the grounds that it was class legislation, and the Indiana Supreme Court used the following language: (Quoting from p. 616.)

“Freedom of contract should not be lightly interfered with. As a general rule, the right of contracting as one sees fit stands untrammelled. But the State has power to restrict this right in the interest of public health, morals, and the like. When, in the present case, it is pointed out that the Legislature has failed in terms to deny the employee’s right to assume the risks from his employer’s disregard of the statute, the question is not ended. If the Legislature has clearly expressed the public policy of the State on a matter within its right to speak upon authoritatively, and if that public policy would be subverted by allowing the employee to waive in advance his statutory protection, the contract is void as unmistakably as if the statute in direct words forbade the making of it. If mines and factories and stores and railroads were to stand vacant, were not to be operated by citizens in whose lives and limbs the State has interest, it is inconceivable that the Legislature would have spoken as it has, even if it had authority to do so. To promote safety to life and limb, as indisputably as to advance public health,



education and morals, to prohibit usury, to provide for exemption and stay of execution, the Legislature has the right to act.

“The statute in question is not class legislation. Employments differ in degree of hazard. Each has its separate dangers, which must be guarded against in the appropriate way. To classify legislation by distinctions that naturally inhere in the subject matter is not to indulge in class legislation. A law is general and uniform if all persons in the same circumstances are treated alike.

“The purpose of this statute to promote the safety of miners being clear, and the right of the Legislature to pass it being unquestionable, the court should not declare it a dead letter. If the employer may avail himself of the defense that the employee agreed in advance that the statute should be disregarded, the court would be measuring the rights of the persons whom the lawmakers intended to protect by the common law standard of the reasonably prudent person, and not by the definite standard set up by the Legislature. This would be practically a judicial repeal of the act.”

In the Act of 1907, p. 193, the Indiana General Assembly, exercising its police power, enacted what was commonly known and designated as the “Wash House Law,” which applied “To only persons in charge of coal mines and collieries, and other places where laborers employed are surrounded by, or affected by similar conditions as employees in coal mines.”

The validity of this law was attacked as being in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of Article I, Section 21, and Article I, Section 23, of the Bill of Rights of the Indiana State Constitution. And, in the case of *Booth v. State*, 179 Ind. 411, the Indiana Supreme Court used the following language:

“It rests solely with the legislative discretion, inside the limit fixed by the Constitution, to determine when public safety or welfare requires the exercise of the police power. Courts are authorized to interfere and declare a statute unconstitutional only when it conflicts with the Constitution. With the wisdom, policy or necessity of such enactment, they have nothing to do. The Act is not open to the infirmity suggested by the appellant, in that it only applies to coal mines, and not other classes of business.”

This same question was raised in the case of *Soon Hing v. Crowley*, 113 U. S. 703, and decided adversely to the contention of appellant. Justice Field uses the following language in the latter case:

“The specific regulations of one kind of business, which may be necessary for the protection of the public can never be the just ground of complaint, because like restrictions are not imposed upon other businesses of a different kind. The same doctrine was declared in *Barbier v. Connelly*, 113 U. S. 27. ‘It will not be doing violence to any of the authority

cited by the learned counsel for the appellant to say that the question of whether the Act is reasonable is only for the Legislature, provided it shall operate alike on all members of a particular class.' "

The wash house case was transferred, on Writ of Error, to the Supreme Court of the United States, and the judgment of the Indiana Supreme Court was affirmed in the case of *Booth v. Indiana*, 237 U. S. 391. Mr. Justice McKenna, in delivering the opinion of the Court, on p. 396, used the following language:

"But a distinction is sought to be made between what a Legislature may require for the safety and protection of a miner, while actually in service below ground, and that which may be required when he has ceased, or has not commenced, his labor. Cases are cited which, upon that distinction, have decided that when a miner has ceased his work, and has reached the surface of the ground, his situation is not different from that of many other workmen, and that, therefore, his rights are not greater than others, and will not justify a separate classification. We are unable to concur in this reasoning, or to limit the power of the Legislature by the distinctions expressed. Having the power, in the interests of the public health, to regulate the conditions upon which coal mining may be conducted, it cannot be limited by moments of time and differences of situation. The legislative judgment may be determined by all the conditions and their influence. The conditions to which a miner passes, or returns from, are very different from those

which an employee at work above ground passes to or returns from, and the conditions and actual service in the cases are very different, and it cannot be judicially said that a judgment which makes such difference a basis of classification is arbitrarily exercised. Certainly not in use of the wide discretion this Court has recognized, and necessarily has recognized, in the Legislature, to classify its objects."

This reasoning of the court readily disposes of the contention of plaintiff that Section 18 discriminates between the men employed on top of the ground and those employed underneath; and we might remark, in passing, that that, in itself, is a question of hazard, under the plaintiff's own contention.

The Legislature of the State of Indiana (Acts 1907, p. 334) enacted what is commonly known and designated as the "Wide Entry Law," and provided that it should be "unlawful for any owner, lessee, agent, or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug, or constructed, any entry, or trackway, after the taking effect of this Act, in any coal mine in the State of Indiana, where drivers are required to drive, or man a car, or cars, unless there shall be a space provided on one, or both sides, continuously of any track, or tracks, measured from the rail, in any such entry, of at least two feet in width, free from any props, loose slate, debris, or other obstruction, so that the driver may get away from the car, or cars, and track, in event of collision, wreck or other accidents," etc.

The statute made an additional classification as between

particular veins of coal, and provided that "the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal fields of Indiana, shall be exempt from the provisions of this Act."

The validity of the above mentioned statute was attacked in the Supreme Court of Indiana, in the case of *State v. Barrett*, 172 Ind. 169, where one Barrett claimed that the Act was unconstitutional by reason of being class legislation, upheld the Act, and in passing (on p. 178) said:

"The statute makes the distinction, or exemption, apply to block mining only, so that the Act applies to all bituminous fields alike. Is it, then, an arbitrary or capricious classification to require conformity to the Act by the bituminous operators, and not by the block coal operators? The rule of equal protection of the law only requires that persons similarly situated shall be treated alike, or that the law shall be applicable alike to all who are in the same class. Equal protection of the law in each particular case means such an exercise of the powers of government as the settled maxims of the law permit and sanction, and under such safeguard for the protection of individual rights, as those maxims prescribe for the class of cases to which the one being dealt with belongs."

And again, on page 180, in the same opinion, the Court says:

"Employments differ as to hazard. Each has its separate dangers, which must be guarded against in an appropriate way. To classify legislation by distinctions that naturally adhere in the subject matter

is not to indulge in class legislation. A law is general and uniform if all persons in the same circumstances are treated alike. The provisions with respect to the operation of mines in the various States, for the protection of health, life and limb, are extensive and varied, and yet their constitutionality is scarcely questioned. Another familiar example is that of fire escapes and fire appliances upon hotels, theaters and other buildings above certain heights, in which people congregate, or labor, and in the requirements for guarding machines. The classifications of cities by population, for the purpose of different local self-government, though the difference may consist only in a few less than the classification, is upheld. It results that the Act is constitutional, the affidavit is good, and the appellee's answer was not good for failing to bring himself within the exemption of the proviso."

This same case was transferred, upon Writ of Error, to the Supreme Court of the United States, and the judgment of the Indiana Supreme Court was affirmed, in the case of *Barrett v. State of Indiana*, 229 U. S. 26, and the Court, on p. 229, used the following language:

"That the mining of coal is a dangerous business, and therefore, subject to regulation is also well settled. It is an occupation carried on at varying depths, beneath the surface of the earth, amid surroundings entailing danger to life and limb, and has been, as it may be, the subject of regulation in the coal mining states, by statutes which seek to secure

the safety of those thus employed. The Legislature, in fact, the judge of the means necessary, and proper to that end, and only such regulations as are palpably arbitrary can be set aside because of the requirements of due process of law, under the Federal Constitution. When such regulations have a reasonable relation to the subject matter, and are not arbitrary and oppressive, it is not for the courts to say that they are beyond the exercise of the legitimate powers of legislation."

On p. 30, the same court, in the same opinion, quoted with approval, the reasoning of the Indiana Supreme Court in the same case, which quotation is as follows:

"It is not unlikely that there is, in fact, a difference in the degree of danger in mining the two kinds of coal. We, at least, cannot say to the contrary. If so, it must be presumed that the Legislature informed itself upon that subject. It may be that mining coal at a distance of 165 feet from the surface is more hazardous than mining it at 90 feet. These matters, with the relative output, the relative number of mines, and persons employed, may have entered into the consideration as requiring the Act in one case and not in the other, and while a relative number of employees, mines, and the output, might not be a proper classification if applied to parties in the same class of work, or under the same conditions, we cannot say that they are not different at different depths, and different kinds of coal, and must presume that they are. At least we cannot say that as applied

to all persons alike employed in mining bituminous coal, the Act is invalid because not applicable to block coal mining, and we cannot say that the Act is unreasonable, or determine as to its propriety, or impropriety, as, to doubt its constitutionality is to resolve in favor of its constitutionality."

The State of Montana singled out the coal industry and enacted a peculiar compensation insurance law applicable to the coal industry of that State, and the Supreme Court of the State held that because the employee could collect his insurance, and also sue and collect doubly, that particular kind of legislation was unconstitutional, and distinguished the Washington and Maryland laws, for the reason that the employee, under those laws, had his right of action in a negligence case abolished. The territorial Legislature of Alaska enacted a compulsory compensation law that applied only to the mining industry, and that Act was upheld in the case of *Johnson v. Kennecott Copper Corporation*, 248 Federal 407.

The Legislature of Maryland enacted a peculiar law governing compensation being paid, and limited the operation of the law to the mining industry in two counties, and to only two counties in the State. The validity of this law was attacked as being in contravention of the Fourteenth Amendment of the Constitution of the United States, and the law was sustained in the following cases:

*American Coal Co. v. Alleghany*, 98 At. 143;  
*Solzuca v. Ryan & Reilly Co.*, 101 At. 711.

After the decision in the case of *Ives v. South Buffalo*



R. R. Co., 200 N. Y. 271, the New York Legislature enacted a compulsory compensation law, the validity of which was attacked upon the grounds set out in plaintiff's Bill in the case at bar, and in dealing with the question of classification under the equal protection clause of the Fourteenth Amendment, Mr. Justice Pitney, in the case of *N. Y. Cent. R. R. Co. v. White*, 243 U. S. 188, delivered the opinion for the Court, in upholding the New York Act, and on p. 208, said:

"The objection under the equal protection clause is not pressed. The only apparent basis for it is in the exclusion of farm laborers and domestic servants from the scheme. But manifestly this cannot be judicially declared to be an arbitrary classification, since it reasonably may be considered, for the risks inherent in these occupations are exceptional, patent, simple and familiar."

The State of Iowa enacted an elective compensation law, and its validity was attacked in the case of *Hawkins v. Bleakley, et al.*, 243 U. S. 210, and in dealing with the peculiar features of that law Mr. Justice Pitney again, on p. 218, used the following language:

"We cannot say that there is here arbitrary classification within the inhibition of the equal protection clause of the Fourteenth Amendment. All employers are treated alike, and so are all employees, and if there be some differences between employer and employee, respecting the inducements that are held out for accepting the compensation feature of the Act, it goes no further than to say that if neither

party is willing to accept them, the employers' liability shall not be subject to either of the several defenses referred to."

Again, the State of Washington, through its Legislature, enacted a compulsory compensation law, and the validity of that Act was questioned in the Supreme Court of the United States, and it was upheld in the case of *Mountain Timber Co. v. State of Washington*, 243 U. S. 219; and then, dealing with the subject of complaint in the case at bar, where plaintiff complains that it will be caused to pay out the sum of twenty-five thousand dollars for cases that do not arise out of any fault or negligence on its part, during the year 1919, and be compelled to pay out five thousand dollars in expenses and attorneys fees, and applying the reasoning of plaintiff's brief, we respectfully call the attention of the Court to the language of Mr. Justice Pitney in rendering the majority opinion for the court, found on p. 235, in which he says:

"The only serious question is that which is raised under the due process of law, and equal protection clauses of the Fourteenth Amendment. It is contended that since the Act unconditionally requires employers in the enumerated occupations, to make payment to a fund for the benefit of employees, without regard to any wrongful act of the employer, he is deprived of his property, and of his liberty to acquire property, without compensation, and without due process of law. It is pointed out that the occupations covered include many that are private in their

character, as well as others that are subject to regulations as public employments, and it is argued that with respect to private occupations, including those of plaintiff in error, a compulsory compensation act does not concern the interests of the public generally, but only the particular interests of the employe, and is unduly oppressive upon employers, and arbitrarily interferes with and restricts the management of private business operations."

And, continuing on p. 236, Judge Pitney says:

"If the legislation could be regarded merely as substituting one form of employers' liability for another, the points raised against it would be answered sufficiently, in our opinion, in *N. Y. Cent. R. R. Co. v. White*, where it is pointed out that the common law rule confining the employers' liability to cases of negligence on his part, or on the part of others, for whose conduct he is made answerable, the immunity from responsibility to an employee for the negligence of a fellow employee, and the defenses of contributory negligence and assumed risk, are rules of law that are not beyond alteration by legislation in the public interest; that the employer has no vested interest in them nor any constitutional right to insist that they shall remain unchanged for his benefit; and that the States are not prevented by the Fourteenth Amendment while relieving employers from liability for damages measured by common law standards and payable in cases where they or others for whose conduct they are answerable are found to be at fault,

from requiring them to contribute reasonable amounts and according to a reasonable and definite scale by way of compensation for the loss of earning power arising from accidental injuries to their employees, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall, that is, upon particular injured employees and their dependents."

And, continuing on p. 238, Mr. Justice Pitney says:

"The authority of the State to enact such laws as reasonably are deemed to be necessary to promote the health, safety and general welfare of their people, carries with it a wide range of judgment and discretion as to what matters are of sufficient general importance to be subject to State legislation and administration. The police power of a state is as broad and plenary as its taxing power."

Kidd v. Pearson, 128 U. S. 1.

The State of Texas, through its Legislature, enacted a workmen's compensation act, regulating the rights and liabilities of employers and employees, respecting disabling and fatal injuries in employment, and was made expressly inapplicable to domestic servants, farm laborers, common carrier railway employees, laborers in cotton gins and employers employing not more than five persons. It will be seen that one of the particular objections, when the validity of this law was questioned, was that railroad employees were exempted under the provisions of the Texas Act, as

plaintiff is complaining in the case at bar, that railroad employes engaged in train service, are exempted under the provisions of the Indiana Workmen's Compensation Act. When this case came before the Supreme Court of the United States, when attacked by an objecting employee, the sole question was whether the Act was in conflict with the due process and equal protection provisions of the Fourteenth Amendment, and on p. 157, in the opinion, Mr. Justice Pitney, in speaking for the court, used the following language:

"There is a strong presumption that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment. If one entertains the view that the Act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism. But in this case adequate grounds are easily discerned. As to the exclusion of railway employees, the existence of the Federal Laborers Liability Act, of April 22, 1908, Chapter 149, 35 Stat. 65, applying exclusively as to employees of common carriers by rail, injured while employed in interstate commerce, establishing liabil-

ity for negligence, and exempting from liability in the absence of negligence, in all cases within its reach, and the difficulty that so often arises in determining, in particular instances, whether the employee was employed in interstate commerce at the time of the injury, reasonably may have led the Legislature to the view that it would be unwise to attempt to apply the new system to railroad employees in whatever kind of commerce employed, and that that may better be left to common law action, with statutory modifications, already in force."

In passing we would remark that at the time that the Federal Workmen's Compensation Law was enacted, in March, 1919, the railroads were being operated by the United States Railroad Administration, in addition to the reasons cited in the Texas case, by Mr. Justice Pitney.

The evidence, uncontradicted, as shown by the Transcript of the Record, was that only 10 per cent of the coal operators had come under the compensation law, prior to 1919, and that 90 per cent of the coal operators had rejected the Act. (See evidence of Samuel R. Artman, on p. 101 of Transcript.)

We, also, in passing, wish to cite from Howe S. Landers' testimony, set out on p. 71 of the Transcript, and quote the following language from his testimony:

"That the injuries to men engaged in the storage and warehouse business are, as a rule, minor injuries; that the injuries to employes engaged in the coal mining business are, as a rule, severe; that the injuries to persons engaged in the coal mining business as to

disfigurement, and marring the appearance of the employees, are very severe; that the reports of employees injured in the coal mining business show a greater per cent of disfigurements and marring of the appearance of the persons, on the head and face, than any other industry in the state."

Again we wish to call the attention of the Court to the testimony of Samuel R. Artman, found on p. 95 of the Transcript, which reads as follows:

"In dealing with coal mining injuries there are three classes that stand out very prominently, that are very severe, burns, to the face, injuries to the back and spine, and injuries to the sacro ilial regions; that burns about the face, in the coal mining industry, are the most severe of any industry in the State, and that injuries to the back and sacro ilial regions are confined largely to the coal mining industry, and are peculiar to it, and are very severe; that disfigurements in the coal mining business are frequent."

And, again, Samuel R. Artman's testimony, on p. 101 of the Transcript, as follows:

"That in the reports made to the Inspection Department of the Industrial Board, for the year ending September 30, 1918, there were included 114 fatalities in the coal mining business; whereas, in the reports made to the Industrial Board, only 70 fatalities are shown."

"That the evidence heretofore introduced in this case shows that in the report made to the Industrial

Board of Indiana, for the year ending September 30, 1918, the total injuries to persons engaged in the coal mining business numbered 2,162; whereas, in the reports to the Mine Inspection Department, the total number of employees injured is given as 1,591; that the figure of 2,162, for total injuries, reported directly to the Industrial Board, approximately and substantially include the total figure of 1,591 to the Mine Inspection Department.

"Witness testified that there were 10 per cent. of the coal operators that came under the Compensation Law prior to 1919; that the compensation cases which were passed upon were restricted wholly to those injuries which occurred at the mines of operators who came under the law; that the questions passed upon by the witness, as a member of the Board, do not include any question of negligence. As to the other 90 per cent. of the coal operators, he had no occasion to hear any evidence with reference to injuries, or what caused them; that witness gave no figures as to the percentage of injuries in the coal mining business which were caused by negligence, but that the figures given applied to all industries.

"Note:—That only 10 per cent. of the accidents in Indiana in all business were the result of actionable negligence."

In passing, and applying the reasoning of Mr. Justice Pitney, our Legislature, being elected by the people and knowing the needs of the people, is presumed to take into consideration the reason why Section 18 of the Amended Act should apply to the coal industry.



Here was an industry where 90 per cent. of the operators had refused to avail themselves of the provisions of the elective act, an industry in which, according to the testimony of Mr. Landers and Judge Artman, the injuries were usually severe in character, and which had produced 114 fatalities, might be a basis for the Legislature in bringing the coal mining business under the provisions of the Workmen's Compensation Law compulsorily.

The State of Arizona has, perhaps, as varied a system of liabilities and compensation as any State in the Union, and this system was brought in review before the Supreme Court of the United States.

Under the laws of Arizona an employee who is injured in the course of his employment has open to him three avenues of redress, any one of which he may pursue according to the facts of his case. They are (1) the common law liability, relieved of the fellow servant's defense, and which the defenses of contributory negligence and assumption of the risk are questions to be left to the jury; that (2) employers' liability law, which applies to a hazardous occupation, where the injury or death is not caused by his own negligence; (3) compulsory compensation law applicable to equally dangerous occupations, by which he may recover compensation without fault upon the part of the employer.

And the Supreme Court of the United States, in the case of *Arizona Employers' Liability Cases*, 250 U. S. 400, upheld the system in Arizona, as a valid exercise of the police power of that State.

The Supreme Court, in defining what constitutes the test of the validity of an act, as to whether it is in contravention of the Fourteenth Amendment, in the case of

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, Justice VanDevanter, on p. 78, used the following language:

"The rules by which this contention must be tested, as is shown by repeated decisions of the Court, are these:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify, in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done, only when it is without any reasonable basis, and, therefore, is purely arbitrary."

"2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because, in practice, it results in some equality.

"3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

"4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

One of the latest exercises, by the General Assembly of the State of Indiana, of the police power, was in the enactment of the State-Wide Prohibition Law (Acts 1917, Chap. 4). The validity of this law was attacked, and

among the grounds of attack were that it was unconstitutional, as being class legislation, in that it discriminated in favor of certain registered pharmacists. The Indiana Supreme Court, in *Schmidt v. F. W. Cook Brewing Co.*, 120 N. E. 19, decided the law to be constitutional, and on p. 23, the Court said:

"It is next insisted that the Act is void because it gives the right to registered pharmacists to deal in intoxicants, under certain restrictions, and because those who have liquors manufactured in the State, which are in bond, may have possession and tax pay, and dispose of such liquors outside of the State, while all others must get rid of the intoxicants which they have on hand, within ten days' time after the law goes into effect.

"The privileges and immunities sections of our Constitution, the class section, and the general law section, are not violated, if an act is reasonably designed to protect the health, morals, or welfare of the public. The Legislature must classify, in nearly every act which it passes, to protect society. To hold that it may not would be to overthrow nearly all the laws that are now made for the public welfare. If the Legislature thought that this law could be better enforced by compelling a person to remove liquor from the State, except those having liquors manufactured in the State, and in bond, it had a perfect right to do so. It is not for this Court to try to expel legislative wisdom on the question of expediency."

It has always been the policy of the Federal Courts, in matters involving the validity of State statutes, respecting State Constitutions, to leave such matters for determination, with the State tribunals; and, in the case of *L. & N. R. R. Co. v. Garrett*, 231 U. S. 298, in deciding a case involving the constitutionality of a Kentucky statute, on p. 305, Mr. Justice Hughes used the following language:

“So far as we are advised the Court of Appeals of Kentucky has not passed upon the validity of the act in question; and this Court has often expressed its reluctance to adjudge a State statute to be in conflict with the Constitution of the State before that question has been considered by the tribunals to which it properly belongs, unless the case imperatively demands such a decision.

*Pelton v. National Bank*, 101 U. S. 143;  
*Michigan Cent. R. R. Co. v. Powers*, 201 U. S. 245.

“Here the argument against the statute is not of that compelling character.”

So, in line with the policy of the Indiana Supreme Court we insist that there is no imperative necessity, and the argument of Appellant is not of such a compelling character as to warrant this Court in deciding Section 18 of the Amended Act to be unconstitutional and in violation of any provision of the Indiana State Constitution.

The Workmen's Compensation Act of Alaska (Laws 1915, C. 71) applied only to mining concerns employing five (5) or more persons and was attacked on the ground that

it was class legislation, and the case was heard in the District Court of the United States for the Third Division of the Territory of Alaska, and afterwards in the Circuit Court of Appeals, Ninth Circuit, before Circuit Judges Gilbert and Hunt, and Judge Wolverton of the District Court, who was speaking for the Court, applied the doctrine of *Barbier v. Connelly*, 113 U. S. 27, and *Lindley v. Natural Carbonic Gas Co.*, 220 U. S. 61, and said:

"The law is assailed by the first objection on the ground that it is thought to be class legislation, and this because the Legislature has selected but one class, namely, mining concerns employing five (5) or more persons in the work. This pertains again to the equal protection of the laws clause of the Fourteenth Amendment. Classification of subjects for regulation by law is a function belonging to the legislative department of government. Generally speaking class legislation is prohibited, but legislation which is limited in its application, if the sphere of its operation affects alike all persons similarly situated is not within the prohibition. The Legislature possesses a wide scope of discretion in the exercise of its function of classification, and such legislation can be condemned as vicious only when it is without any reasonable basis, and therefore purely arbitrary; and when legislative classification is called in question, if any state of facts can be reasonably conceived that will sustain the law, the existence of that state of facts at the time it was enacted must be assumed."

*Johnston v. Kennecott Copper Corporation*, 248 Federal 407.

## ARGUMENT.

### FACTS SHOWN BY THE EVIDENCE.

It is the contention of the defendants that plaintiff has failed to show a state of facts that would justify the Court in declaring Amended Section 18 as being unconstitutional, and in conflict with the Fourteenth Amendment to the Constitution of the United States, or in conflict with either Sections 21 or 23 of the Indiana Bill of Rights; and that from the evidence itself, and applying the doctrine of the case of *Lindsley v. Natural Carbonic Gas Co.*, we insist that there are many reasons that can reasonably be conceived, that would sustain it, and that plaintiff has failed to produce sufficient evidence to justify the Court in declaring that the section in question does not rest upon any reasonable basis.

Practically every one of the forty compensation laws that have been enacted by the several Legislatures have classified certain occupations, have exempted some, brought in others, and practically without exception each of these laws has been held to be constitutional.

### NUMBER OF WORKMEN AFFECTED.

Plaintiff makes the point that Samuel R. Artman testified that only one out of seventeen accidents happened in coal mines during the year 1918, according to the statistics introduced in evidence.

We wish to call the Court's attention to the fact that the plaintiff has only chosen sixteen out of two hundred and thirty-three industries in the State as the basis for

its comparison. (See Table 125, p. 71, Transcript of Record.)

A very salient and striking bit of evidence was developed in the cross examination of one Howe S. Landers. He testified that he was formerly Secretary of the Industrial Board of Indiana, and was familiar with the Year Book of Indiana, so far as the statistics from the Industrial Board were concerned, which Year Book was prepared under his supervision and direction, excepting those statistics relating to the Inspection Department.

When the General Assembly of Indiana convened in 1919, the coal industry, a basic industry, which, in 1918, had produced 28,795,682 tons of coal and employed 27,032 men, had suffered 114 fatalities, with a death rate of 4.08 per 1,000 (see Table 180, p. 94, Transcript of Record) and was the only industry that, in the main, had refused to accept the provisions of the then elective Workmen's Compensation Law.

We quote from the testimony of Mr. Landers (p. 70, Transcript of Record):

"That witness has not made any computation from the official record that would assume to show the gross number of employees, and the gross number of accidents within the several particular industrial occupations; that this information could only be compiled after a long and laborious amount of work; that witness did not go into the relative degree of disability at all; that in compiling the data on the coal mining industry, witness included the gross number of employees reported to the License Department, including those working above ground, as well as un-

der the ground; that the great majority of employers of labor in Indiana, other than the coal mining business, have elected to operate under the Compensation Law."

Thus, of all the two hundred and thirty-three industries in the State, the majority had accepted the law, and about 90 per cent. of the coal operators had rejected it.

The Legislature is now condemned by the Appellant for using its police power sparingly, and because it only made compensation compulsory to the one class that in the main had rejected the Act, a class that was engaged in an inherently peculiar business, and who had singled themselves out by refusing to pay compensation and who were operating under an archaic common law and liability system.

The coal industry, more than any other industry, has, from time to time, been the subject, by legislation, of certain restrictions, on account of the peculiarities inherent in the business, and because of its hazardous nature.

The Legislature, in 1911 (Burns' R. S. 1914, Sec. 8624-a), among other things, said, "The business of mining coal is hereby declared a dangerous occupation, industry and business."

The primary object of Workmen's Compensation Laws is, first of all, to prevent industrial accidents. When an industry has to pay compensation in virtually every accident, its insurance rates are increased, and, by the inauguration of safety devices for the prevention of accidents, insurance carriers reduce insurance premiums. The Legislature evidently believed a Workmen's Compensation Law would lessen industrial accidents.



We wish to call the attention of the Court to the wording of the title of the Indiana Workmen's Compensation Law (Chap. 106, Acts 1915): "An Act to Promote Prevention of Industrial Accidents," etc.

Under Section 52 of said Act, set out in Appellant's brief (p. 81), it will be observed that "By virtue of the Compensation Law the rights, powers and duties conferred by law upon the State Bureau of Inspection, are hereby continued in full force, and are hereby transferred to the Industrial Board."

The law also provided that the Deputy Inspectors appointed by the Governor as Deputy Inspectors, in the State Bureau of Inspection, to-wit, Inspector of Buildings, Factories and Work Shops, Boilers, and Inspector of Mines and Mining, were transferred to the jurisdiction of the Industrial Board.

### DISMEMBERMENTS.

Appellant complains because, according to the figures it introduced in evidence, coal mining stands fifth in the percentage of dismemberments to the number of employees.

We submit that the table shown on p. 24 of Appellant's brief does not disclose the severity or the character of these dismemberments. Figures are only submitted of five industries out of the 233 industries of the State, as set out in Table 125, pp. 71, 72, 73, 74, 75, 76, 77, 78 and 79 of the Transcript of Record.

### TOTAL NUMBER OF ACCIDENTS.

We insist that the most serious kind of accidents are fatal accidents. These are the accidents that not only

concerns employee and employer, but society at large. It ought to be the concern, and is, of every citizen of the State of Indiana, and if the Legislature believed it to be the policy of wisdom to single out the coal industry, as it has done on many occasions, and make a compensation law compulsory as to it, as a class, it had the right to do so, and it is a legislative, and not a judicial, question.

### DEATH RATE.

Appellant claims that the death rate in coal mining in Indiana, during the year 1918, was abnormal. Is that not, in itself, a justification for the Legislature exercising its police power?

We herewith set out the Table of Accidents, No. 3, p. 94, of Transcript of Record, as follows:

## "Table of Accidents No. 3.

Table showing number of tons of coal produced, number of persons employed, the number of fatalities, the number of tons produced per fatality, and the number of killed per thousand employed, for each year from 1898 to 1918, inclusive.

Years.	Tons.	Produced.	Employed.	Tons per fatality.	Killed per 1,000 employed.
1898.....	5,146,920	No report	22	233,950	.....
1899.....	5,864,975	7,306	15	390,997	2.04
1900.....	6,283,063	8,868	18	349,059	2.03
1901.....	7,019,203	10,296	24	292,466	2.33
1902.....	8,763,197	13,139	34	265,133	1.83
1903.....	9,992,563	15,128	15	181,683	.99
1904.....	9,872,404	17,826	34	290,304	1.91
1905.....	10,985,972	17,856	47	233,956	2.63
1906.....	11,422,027	19,562	31	268,450	1.60
1907.....	13,250,715	19,009	53	250,013	2.79
1908.....	11,997,304	19,002	45	266,606	2.36
1909.....	13,692,069	18,908	50	273,841	2.64
1910.....	18,125,244	21,171	51	355,397	2.41
1911.....	9,571,269	20,778	33	290,059	1.60
1912.....	14,204,578	21,230	37	383,906	1.74
1913.....	17,246,565	21,683	59	292,315	2.72
1914.....	16,635,178	22,110	49	339,493	2.21
1915.....	15,096,921	20,702	54	284,202	2.60
1916.....	18,238,591	21,300	48	379,969	2.25
1917.....	24,013,021	23,940	66	363,834	2.75
1918.....	28,796,682	27,032	114	292,067	4.06

\*1911 report for nine (9) months only.

An examination of this Table, alone, would justify the Legislature in exercising its police power in singling out the coal industry.

Beginning in 1898 there were 22 fatalities, and these fatalities had steadily increased until, when the Legislature

convened in 1919, statistics available to it showed that they had mounted to the appalling number of 114.

We also wish to submit Table No. 1 (p. 91, Transcript of Record), setting out United States Government statistics compiled by the Bureau of Mines, which Table is as follows:

“TABLE I.

“Estimate of Fatal Industrial Accident in the United State in 1913 by Industry Groups.

“(The fatality rates used in this estimate are approximations. They are slightly at variance with the exact rates for certain industries, particularly mining, for the year 1913. For metal mines in 1913 the fatality rate, according to the Bureau of Mines, was 3.54 per 1,000; for coal mines, 3.73; for quarries, 1.72. In the estimate it is assumed that for these industries in particular the approximate rates indicate more accurately the average risk for a period of years, it being considered that even the official rates fall short of absolute accuracy and completeness in the absence of a Federal law making the reporting of mine accidents compulsory upon all operators. The estimate was arrived at before Technical Paper 94 of the Bureau of Mines was published.)

Industry group. Males.	Number. employees.*	Fatal industrial accidents.*	Rate per 1,000.
Metal Mining.....	170,000	680	4.00
173 Coal Mining.....	750,000	2,625	3.50
Fisheries.....	150,000	450	3.00
Navigation.....	150,000	450	3.00
Railroad employes.....	1,750,000	4,200	2.40
Electricians (light and power).....	68,000	153	2.25
Navy and marine corps.....	62,000	115	1.85
Quarrying.....	150,000	255	1.70
Lumber industry.....	531,000	797	1.50
Soldiers, United States Army.....	73,000	109	1.49
Building and construction.....	1,500,000	1,375	1.25
Draymen, teamsters, etc.....	686,000	686	1.00
Telephone and telegraph (Includ- ing linemen).....	245,000	123	.50
Agricultural pursuits, including forestry and animal husbandry..	12,000,000	4,200	.35
Street railway employes.....	320,000	320	1.00
Watchmen, policemen, firemen.....	200,000	150	.75
174 Manufacturing (general).....	7,277,000	1,819	.25
All other occupied males.....	4,678,000	3,508	.75
All occupied males.....	30,760,000	22,515	.73
All occupied females.....	7,200,000	540	.075

\*Partly estimated.

These statistics show that only one class of work is more hazardous, in point of fatalities, than coal mining, and that is metal mining. The record does not disclose any evidence of a metal mine in Indiana.

These statistics were available to the Legislature, and might have been used as a justification for its action.

On pp. 24 and 25 of Appellant's brief, Appellant has claimed that the ratio of total accident to the number of employees of certain selected classes, coal mining stands twelfth in the list. We have taken these similar classes of occupations and have given the number of fatalities per class, which disclosed the following:

## FATALITIES.

General contractors.....	21
Gas manufacturing.....	None
.. Transfer, storage and warehouse.....	2
Oil refining.....	1
Stone quarrying and cutting.....	2
Glass manufacturing.....	4
Iron and steel.....	46
Veneer manufacturing.....	None
Cement manufacturing.....	None
Furniture manufacturing.....	None
Explosives .....	None
<hr/>	
Total deaths.....	76

(See pp. 95, 96 and 97 of Transcript of Record.)

This same year, ending October 1, 1918, shows coal mining, 114 deaths.

The number of employees engaged in the above named businesses (see p. 69, Transcript of Record) is as follows:

Transfer, storage and warehouse	604
General contracting.....	5,357
Gas manufacturing.....	2,508
Iron and steel.....	27,720
Oil refining.....	5,129
Glass manufacturing.....	8,377
Stone quarrying and cutting....	2,315
Iron, steel and allied industries, including metal finishers, saw manufacturing, stove manufac-	

ing, foundry castings and forgings .....	59,516
Veneer manufacturing.....	1,279
Cement manufacturing.....	2,037
Furniture manufacturing and repairs .....	11,158
Manufacturing of explosives....	817

Total ..... 126,817 employees,  
producing 76 deaths.

Whether there is a repetition in the addition of the employees of the iron and steel industry, we are unable to say, but deducting 27,720, from 126,817 employees, still leaves 99,097 employees, out of which there occurred 76 deaths.

In the same Table (p. 69, Transcript of Record), among 26,877 coal miners, there were 114 deaths.

Appellant states in its brief, "The undisputed evidence shows that this unusual death rate cannot continue."

Taking the same Table (p. 94, Transcript of Record), in the year 1913 there were 21,683 men employed in the coal industry of Indiana, out of which 59 men suffered death. This was before the world war. Our answer is that the undisputed evidence shows that for more than twenty years the death rate in the coal industry has been more than in any other industry in the State.

Cannot the State of Indiana, exercising its police power, provide a compulsory system of compensation to deal with this appalling situation? Can the Court say that it is arbitrary, oppressive and unjust? Could not the Legis-

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Cannot the State of Indiana, exercising its police power, provide a compulsory system of compensation to deal with this appalling situation? Can the Court say that it is arbitrary, oppressive and unjust? Could not the Legis-

lature know of the expenses and uncertainties of liability litigation, and the vexatious delays and appeals which were a matter of common knowledge, and enact a compulsory compensation law applying it to the coal industry, in order to more properly care for the dependents of deceased coal miners? Could not the Legislature transfer a large burden from the taxpaying public and place it where it properly belongs?

### CHARACTER OF INJURIES.

Appellant attempts to make the point that as the State has a very comprehensive system of mining statutes, and assumes that the several persons, firms and corporations are presumed to obey them, the character of the injuries are not sufficient to justify the Legislature in the enactment of a compulsory compensation law.

Did the Lower Vein Coal Company come into Court with clean hands?

Did it comply with the law and assist the State authorities in compiling accurate statistics?

We respectfully call the attention of the Court to the testimony of Mr. Clifford Hoffman (p. 100, Transcript of Record) and Mr. Samuel R. Artman, Chairman of the Industrial Board (p. 100, Transcript of Record):

Mr. Hoffman testified that he was employed by the Indiana Coal Operators' Reciprocal Organization, which has for its purpose the inspection of mines and the investigation of accidents, and the adjustment of personal injury claims; that the mine boss, or superintendent of the mine, sends a report to this organization of accidents that occur in and around the mine; that those reports sometimes come

in a day or two, and sometimes in a week or two; that at the present time 115 or 120 mines are members of this organization; that approximately 2,500 accidents were reported to this Association, between the 1st day of June, 1918, and the last day of June, 1919; that the reciprocal organization includes a large percentage of the coal producing business, approximating 75 or 80 per cent. of the tonnage.

Mr. Hoffman also testified (p. 100, Transcript of Record) that during almost the identically same period of time, all of the coal companies of the State only reported 1,591 accidents to the Mine Inspection Department, and that all of the coal companies of the State reported to the Mine Inspection Department 900 less accidents than merely the members of the Indiana Coal Operators' Reciprocal Organization reported to their own insurance concern. In other words, the coal operators of Indiana are responsible for the statistics compiled by the Industrial Board, and which they used in evidence, and from which they ask equity.

The plaintiff, the *Lower Vein Coal Company*, from September 30, 1917, to October 1, 1918, reported 12 injuries to the Industrial Board and 6 to the Mine Inspector. The Vandalia Coal Company, during the same period, did not report any injuries to the Industrial Board; Zeller McClellan Company reported 9 to the Industrial Board and none to the Inspector of Mines; J. Woolley Coal Company did not report any to either; Shirkey Coal Company reported 31 to the Industrial Board and 2 to the Inspector of Mines; Ayrshire Coal Company reported 78 to the Industrial Board and 2 to the Inspector of Mines; Coal Bluff Mining

Company reported 6 to the Industrial Board and 1 to the Inspector of Mines; Grant Coal Company, 6 to the 198. Industrial Board, none to the Inspector of Mines; Jackson Hill Coal and Coke Company reported 162 to the Industrial Board and only 18 to the Inspector of Mines.

Judge Artman, continuing (p. 102, Transcript of Record), testified as follows:

"I think that the actual fact is that neither one of these reports or both of them combined is or are reliable. In other words, I don't think if you take the accidents reported in both of them in the aggregate for the year 1918, for the period September 30th, 1917, to October 1st, 1918, we have over sixty-six and two-thirds per cent. of the injuries that actually occurred in the coal mines of Indiana. For instance, here is the J. Woolley Coal Company that do not report any to anybody. I think if you held an inquisition on that company you would find out facts that would justify the reports of a great many."

Also, on p. 102, Transcript of Record, Mr. Clifford Hoffman testified that the J. Woolley Coal Company reported to the Indiana Operators' Reciprocal Organization 46 accidents, substantiating the claim of Mr. Artman.

On p. 104, Transcript of Record, when Mr. Clifford Hoffman was recalled, he testified that the *plaintiff, Lower Vein Coal Company*, was a subscriber and a member of the *Indiana Coal Operators' Reciprocal Organization*, and that from the 1st day of October, 1917, to the 1st day of October,

1918, it reported 135 accidents to the Indiana Coal Operators' Reciprocal Organization.

And yet plaintiff, which is asking equity, reported only 12 accidents to the Industrial Board and 6 to the Mine Inspector for substantially the same period of time.

If this ratio of discrepancy was kept up it could fairly be assumed, from the evidence in this case, that in truth and in fact there occurred between four and five thousand injuries in the coal mines of Indiana, in the year ending October 1st, 1918, and a great many more than 114 deaths. Perhaps the Legislature knew this condition existed in Indiana.

The burden rests upon the plaintiff to show that the Act was unconstitutional. *The record shows that the Lower Vein Coal Company has only reported 18 accidents to the State authorities, and 135 accidents to its own private insurance concern. It was within the peculiar power of plaintiff to illuminate the District Court of the United States by facts, figures and statistics, through this same Indiana Coal Operators' Reciprocal Organization, and it has conspicuously failed so to do.*

*The Lower Vein Coal Company, plaintiff in this case, did not report 117 accidents to the State authorities. It did not report but 13 1/3 % of the accidents that occurred in practically the same period. We inquire: Has it done equity?*

On this basis we insist that the plaintiff has made no showing as to whether, under the Compensation Law, it will be required to pay more money than it would under the Liability Law. Plaintiff has failed to show what percentage of these 135 accidents occurred by reason of negligence or contributory negligence—whether the risks were

assumed or not, how much it cost the company under liability or the common law, and how much it would have cost the company under the Compensation Law. Plaintiff has failed to show that it has been harmed in any property right, and before it can ask equity it is incumbent upon it to show this by convincing evidence. The court cannot say under the evidence that the compensation law has or will cost a dollar in excess to the common law or liability laws.

#### NUMBER OF DEATHS.

It is the contention of plaintiff that the number of deaths does not determine the hazard of occupation, from a compensation standpoint.

Under the Compensation Law, in the event of a workman's death, his dependents receive 55 per cent. of his average weekly wage, for a period of 300 weeks, but we wish to call the attention of the Court to Section 40, quoted in Appellant's Brief (p. 76), which reads as follows:

"Section 40. In computing compensation under the foregoing section, the average weekly wages of an employee shall be considered not more than \$24, nor less than \$10; and, provided further, that the total compensation payable under this Act, shall in no case exceed \$5000."

In other words, the most that any employee or dependent may receive is 55 per cent. of \$24, making the maximum average weekly wage \$13.20 per week. The Government statistics show that coal mining is more hazardous in point of fatality than any other industry, except metal mining.

From an industrial standpoint, from the standpoint of the welfare of society, the most dangerous injury is one that produces death. Dependents cannot receive compensation in a sum more than \$4,000, including \$100 for funeral expenses. Under the Indiana statutes dependents may receive as high as \$10,000 in death cases under the liability laws.

### WAGE CONDITIONS.

On p. 33 of Appellant's Brief, there is found the following language:

"Mr. Phil Penna, at one time President of the Miners' National Union, testified in this respect, and his evidence is not disputed, that miners have been able to earn during the last year on a very conservative basis, from \$7.50 to \$8.00 a day, theoretically of eight hours, but practically of six hours; that even the men who work about ground receive from \$4.65 a day upward for their work. He added that thousands of miners in Indiana had paid income taxes on incomes in excess of \$2,500 for the year 1918. (Transcript, p. 84.)

"These facts demonstrate that the coal mining industry is the highest paid industrial work in Indiana."

We challenge the Appellant to show a scintilla of evidence in the record by which the wages in any other industry in the State have been shown. The statement is an assumption, and entirely out of the record. We think it is not relevant to the issue, as bearing upon the constitu-

tionality of Amended Section 18, as to what were the wage conditions in the coal industry in Indiana.

Appellant did not cite that part of Mr. Penna's testimony, when, upon cross examination (p. 85, Transcript of Record) he testified:

"since the signing of the armistice about one-third of the mines have been in operation; that is, that about 33 per cent. of the potentiality has been working, until recently, and now is close to 50 per cent. Several mines have suspended operation altogether and closed down; that at the present time in the bituminous field the coal mines are operating about three days a week."

Plaintiff, in its Brief, sets out the fact that because the coal miners employ lawyers who represent them in personal injury and compensation suits, they are a favored class.

The plaintiff also says that in other industries in Indiana, where the employer has rejected the Act, the industrial worker is required to pay his own attorney.

This is another assumption of facts which is not borne out by the record. There is not a scintilla of evidence in the record showing whether or not any other class of industrial workers have attorneys regularly employed to represent them in suits of this character.

However, we wish to call the attention of the Court to the fact that plaintiff has not cited any authority in which any statute has ever been declared unconstitutional because its validity depended upon a contract between client and attorney. Such a contention is irrelevant, and in the ab-



sence of Appellant's counsel citing any such authority, we shall deem the matter as having been waived.

### CONCLUSION.

In conclusion, we wish to state that the record discloses that about the only claim on the part of the plaintiff, that Section 18, as amended, is invalid, is by reason of the test of hazard, which on p. 25 of its Brief, it does not admit to be the test.

The record shows conclusively that the death rate is highest in the coal industry. The statistics which the coal operators, themselves, have provided the State authorities, show that the death rate is very much higher than in any other industry in the State of Indiana. Judge Artman has testified that the disfigurement and injury are more severe than in any other businesses.

The coal industry was practically the only great industry in Indiana that had not elected to pay compensation when the Legislature convened in 1919, and the Legislature only brought the one great basic industry under its terms that had persistently refused to accept its provisions.

The statistics that were available for plaintiff were those which had been furnished by it and the coal operators of the State that had failed to correctly report the number of injuries, and, consequently, such statistics are necessarily inaccurate, and would not justify the striking down of Amended Section 18.

The coal industry is, inherently, a peculiar business, having special and peculiar hazards inherent in the business.

Plaintiff has failed to show that it would sustain any substantial damage by reason of being brought under the Compensation Law. It has failed to show what the liability

system has or would cost it, and what it would pay out under the Compensation Law and, therefore, has not made any showing of any property damage suffered or likely to be suffered.

Counsel for Appellant, in their Briefs, have shown many citations of authority, which are remarkable in that practically every compensation law has been upheld and its classifications have been sustained by the Court. The law shows, upon its face, that both in privileges conferred and liabilities imposed every person, firm, partnership, individual and corporation in the State is treated alike, under like circumstances, and that each of the employees thereof is treated alike under like circumstances.

By reason of said facts we believe that the exercise of the police power by the State, in the enactment of the section in question, was a valid one.

We, for the purpose of assisting the Court, have compiled a syllabus of the mining laws of Indiana, for the purpose of showing to what extent the Legislature has gone in dealing with this peculiar industry, which we set out herein as "Appendix B."

Practically all of the provisions of the State mining laws have been attacked from time to time, and, as we have heretofore set out, no act of the Legislature of the State of Indiana, that related to the business of mining coal, has ever been set aside.

Respectfully submitted,  
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# LAWS RELATING TO COAL MINES AND MINING, IN INDIANA

## APPENDIX "A."

(Acts 1905, p. 65. In force April 15, 1905.)

8569. (7429.) *"Mine" and "Operator" defined.*—

1. That the term "mine" as used in this act includes the working in every shaft, slope or drift which is used, or has been used, in the mining and removing of coal from and below the surface of the ground. The term "operator," as used in this act, is hereby defined to mean any corporation, company, firm, person, proprietor, lessee, owner or occupier of any coal mine in this state or any person upon whose account the mine is operated.

8570. (7430.) *Maps of coal mines, refusal, duties of inspectors.*—2. The operator of each mine shall make, or cause to be made, an accurate map or plan of the working mines on a scale of not less than two hundred feet to one inch, showing the area mined or excavated, the arrangement of the haulage roads, air courses, break throughs, brattices, air bridges or overcasts and doors used in directing the air currents in such mine, the location and connection with such excavation of the mine of the lines of all adjoining lands with the names of the owners of such lands, so far as known, marked on the map. Such map shall show a complete working of the mine, and, when completed, shall be certified to by the owner, agent or engineer making

the survey or map to be a true and correct working of said mine. The owner or agent shall deposit with the inspector of mines a true copy of such map within thirty days after the completion of the survey of the same, the date of which shall be shown on each copy, the original map and survey to be kept at the office of such mine open for inspection of all interested persons at all reasonable times. Such map and copy thereof shall be extended each year between the first day of May and the first day of September, and shall be filed as required in making the original survey showing the exact workings of the mine at the date of the last survey. At the request of any coal mine the owner of the land, the miners working therein or other persons interested in the workings of such mine, the inspector of mines shall make, or cause to be made, an accurate map of the workings thereof, on a scale of not less than two hundred feet to the inch, showing the area mined or excavated and the location and connections of the lines of all adjoining lands therewith and the names of the owners of such lands so far as known. Such map shall be sworn to by the surveyor to be a correct map of the workings of such mine, and shall be kept on file in the office of the inspector of mines for examination at all times. All expenses shall be paid by the party causing such survey and map to be made. In case the operator of any mine shall fail or refuse to furnish a map as required by this law, it shall be the duty of the inspector of mines to appoint a competent mining engineer to make the survey and maps and file and deposit them as required by law, and for his services he shall be entitled to a reasonable fee to be paid by the party whose duty it was to make such survey and map, and shall be entitled to a lien on the mine and

machinery to the same extent as is now provided by law for other work and labor performed in and about the mines of this state. Before a mine or any part of a mine is abandoned the owner or agent shall make a survey showing the farthest extremity of the workings of such mine, and a map thereof made and filed within thirty days thereafter at the office of the county recorder in the county where such mine is located; said map shall have attached thereto the affidavit of the mining engineer making the map, and of the mine boss in charge of the underground workings of said mine. Such map shall be properly labeled and filed by the recorder and preserved as a part of the records of the land on which said mine is located, and the recorder shall receive for said filing from said owner or agent a fee of fifty cents. Upon payment of the fees, the inspector of mines shall make, within a reasonable time, and deliver to the party so demanding the same an accurate copy of any map or plan on file in his office. The original map or plan of any coal mine or the copy filed with the inspector of mines or a certified copy, issued under the hand and seal of such inspector, shall be evidence in any court of justice in this state. In order that the maps, reports and other records pertaining to the office of inspector of mines may be properly preserved, a room in the state house shall be ~~set~~ aside and furnished in a suitable manner as an office for said officer. (As amended Acts 1911, p. 626.)

8571. (7431.) *Number of workmen, outlet.*—3. It shall be unlawful for any operator to allow more than ten (10) persons to work in any mine at any one time after five thousand (5,000) square yards have been excavated until a second outlet shall have been made: Provided, That all

air and escape shafts sunk hereafter, shall be separated from the hoisting shaft by at least two hundred (200) feet of natural strata and shall be provided with stairways not less than two (2) feet in width, at an angle of not more than fifty (50) degrees with landings at easy and convenient distance and with guard rails attached to each set of stairs from the top to the bottom of the same, and shall be available at all times to all employes engaged in such mines: also Provided, That the stairways, landings and guard rails shall be of suitable design and strength to accomplish the purpose for which they are intended, and shall be kept free from obstructions. And that when the escape and air shafts are combined, the escape shaft and air shaft be separated by a good substantial partition from top to bottom: Provided further, Where the approach or approaches to the escape shaft crosses an air course, entry or other passageway used as an air course, either as an intake or return, the air current shall be conducted by an overcast or undercast, over or under the point where such approaches cross the air course, and that all approaches to escape shafts shall be kept free from slate, mine cars, mine tracks and other debris and shall be used only as a means of ingress or egress to or from the escape shaft. All water coming from the surface or out of any strata in such shaft shall be conducted by rings or otherwise to prevent it from falling down the shaft and wetting persons who are descending or ascending the shaft. The operator may provide at such outlet or escape a hoisting apparatus, which shall be at all times available to all persons in the mine, the same signals to be used as provided by law for use at hoisting shafts. The traveling roads or gang-ways to said outlet shall be sepa-

rated from the hoisting shaft by at least two hundred (200) feet of natural strata and not less than four (4) feet in height and four (4) feet wide and shall be kept as free from water as the average haulage roads in such mines. At all points where the passageway to the escapement shaft, or other place of exit, is intersected by other roadways or entries conspicuous boards shall be placed indicating the direction it is necessary to take in order to reach such place of exit. It shall be unlawful to erect any inflammable structure or building or powder magazine on the surface so near the escapeway as to jeopardize the safety of the workmen in case of fire. And no boiler house shall be erected nearer than thirty-five (35) feet of the mine opening. All explosive materials shall be stored in fire proof buildings on the surface located not less than three hundred (300) feet from any other building. Fans shall be located and maintained at such place as not to be directly over the opening of an air shaft or escapement shaft, and all fans hereafter installed shall be arranged so as to enable the operator, when desirable, to reverse the air current: Provided, further, That escape shafts already constructed under the provisions of the law herein amended shall not be affected by this act except they shall be maintained according to the provisions herein. (As amended, Acts 1913, p. 701.)

8572. (7432.) *Cages, safety catches, riding in.*—4. The rope used for hoisting and lowering in every mine shall be a wire rope, and it shall be securely fastened to the shaft of the drum where two separate ropes are used, and at least one whole lap shall remain on the drum when the cage is at rest on the lowest caging place in the mine, and it shall

be examined by some competent person every morning before the men descend into the mine. The operator of every mine shall provide a cover of  $\frac{1}{4}$ -inch boiler plate overhead on all carriages or cages used for lowering or hoisting persons into and out of the mines, and on top of every shaft an improved safety gate; also, an approved safety spring on the top of every slope. Approved safety catches shall be attached to every cage used for the purpose of hoisting or lowering persons. All persons are prohibited from riding on the cages when coal or dirt is being hoisted, and in no case shall more than six men ride on any cage or car at one time.

8573. (7433.) *Brake*.—5. An adequate brake shall be attached to every drum used for lowering or raising persons into or out of all shafts or slopes.

7574. (7434.) *Indicator*.—6. A proper indicator shall be attached to every hoisting apparatus in addition to any mark on the rope, which shall show to the hoisting engineer the position of a cage or load in the mine.

8575. (7535.) *Fencing, lights, speaking tubes, signals*.—7. The operator of every mine shall keep the top of every mine and the entrance thereof securely fenced off by vertical or flat gates covering and protecting the mouth of such mine. Two lamps shall be kept lighted at all times when the mine is in operation, except when electric lights are used, one on each side of the shaft, not more than ten (10) feet from said shaft in each vein where men get on or off the cages. There shall be gates hung at each vein, other than the lower one, so that at all times except when coal is actually being placed on the cage or when empty cars are being taken off the cage there shall be a barrier prevent-



ing any one falling into the shaft. The operator of such mine, upon receiving notice from the inspector that one or more safety lamps are necessary to the safety of the men in such mine, shall at once procure and keep for use such number of safety lamps as may be necessary. All safety lamps used for examining mines or for working therein shall be the property of the operator and shall remain in the custody of the mine boss or other competent person, who shall clean, fill, trim, examine and deliver the same locked and in safe condition to the men when entering the mine, and shall receive the same from men at the end of their shift. Said person or persons shall be responsible for the condition and proper use of safety lamps while in their possession and the safe return of said lamps to the place from whence they received them. The operator of any mine shall provide and maintain a metal tube from the top to the bottom of the mine, suitably adapted to the free passage of sound, through which conversation may be held between persons at each vein with a signal bell at the top and bottom of each mine. There shall be a code of signals at all mines, with a signal bell at the top and bottom of each mine, one bell shall signify to hoist coal or empty cage, and also to stop either when in motion, two bells shall signify that men are coming up; when return signal is received from the engineer men will get on the cage and ring one bell to hoist; four bells shall signify to hoist slowly, implying danger. The engineer's signal for men to get on the cage shall be three bells. A whistle may be used at the top of the mine instead of a bell. A copy of the above code of signals shall be printed and conspicuously posted at the top and bottom of the shaft and in the engine room.

8576. (7436.) *Abandoned mine, fencing.*—6. The entrance of an abandoned mine shall be securely fenced off, so that no injury can arise therefrom.

8577. (7437.) *Scales, weighmen, inspection.*—9. The operator of any mine at which the miners are paid by weight shall provide suitable and accurate scales of standard manufacture for weighing of coal which may be procured from such mines; such operator shall be required to keep United States standard weights to test said scales. At every mine where the coal mined is paid for by weight it shall be the duty of the weighman and the check-weighman to examine and balance the scales each morning, and in no case shall any coal be weighed until such scales are tested by the United States standard weights and found to be correct. Said weighman shall accurately weigh and he shall, together with the check-weighman, record the weight of each miner's car of coal delivered, which record shall be kept open at all reasonable hours for inspection of all miners or other persons pecuniarily interested in the product of such mine: Provided, That if the weighman and check-weighman shall disagree work may continue until the inspector of mines can be present and any erroneous weights made during such times shall be rectified. When differences shall arise between the weighman and check-weighman, or operator, of any mine as to the correctness of the scales, the same shall be referred to the inspector of mines, whose duty it shall be to see and regulate the same at once. The inspector of mines and miners employed in the mine, the owner of the land and others personally interested in the royalty of such mine shall, at all proper times, have full right of access to and examination of scales or

apparatus used for weighing coal in or about said mine, including the bank book in which the weights of coal are kept, to determine the amount of coal mined for the purpose of attesting the accuracy thereof.

8578. (7438.) *Management of engines and cages.*—

10. The operator shall not place in charge of any engine used for conveying into or hoisting out of any mine any but experienced, competent and sober engineers. The engineer in charge of such engine shall allow no person except such as may be deputed for that purpose by the owner or agent to interfere with it or any part of the machinery, and no person shall interfere, or in any way intimidate the engineer in the discharge of his duties. He shall not permit any one to loiter in the engine room and he shall hold no conversation with any officer of the company or other person while the engine is in motion, or while his attention should be occupied with the business of hoisting. A notice to this effect shall be posted on the doors of the engine house. He shall thoroughly inform himself of the established code of signals. Signals must be delivered in the engine room in a clear and unmistakable manner, and when signal is received that men are on the cage he shall speed his engine not to exceed six hundred (600) feet per minute.

8579. (7439.) *Ventilation, mine boss, currents of air, airways.*—11. The operator of any mine shall provide and maintain hereafter for every such mine a sufficient amount of ventilation, affording not less than one hundred (100) cubic feet of air per minute for each and every person employed, and three hundred (300) cubic feet per minute for each mule, horse or other animal used in said mine, measured at the foot of the downcast, and as much more as

the circumstances may require. It shall be forced and circulated around the main entries, cross entries and working places throughout the mine so that said mine shall be free from standing gas of whatsoever kind to such an extent that the entire mine shall be in a fit state at all times for men to work therein, and will render harmless all noxious or dangerous gases generated therein. Every place where fire damp is known, or supposed to exist, shall be carefully examined with a safety lamp by a competent fire boss immediately before each shift, and in making said examinations it shall be the duty of the fire boss, at each examination, to leave at the face of every place examined evidence of his presence, and it shall be unlawful for any person to enter any mine, or part of mine, generating fire damp until it has been examined by the fire boss and reported by him to be safe. The ventilation required by this act may be provided by any suitable appliance, but in case a furnace is used for ventilation purposes it shall be built in such a manner as to prevent the communication of fire to any part of the works by lining the upcast with incombustible material for a sufficient distance up from the said furnace. But in no case shall a furnace be used at the bottom of the shaft in the mine for the purpose of producing a hot upcast of air where the hoisting appliances and buildings are built directly over the shaft. The operator shall employ a competent mine boss, who shall be an experienced coal miner, and shall keep careful watch over the ventilating apparatus and the airways, and shall see that, as the miners advance their excavations, all loose coal, slate and rock overhead are taken down or carefully secured against falling therein on the traveling and airways. He shall measure the air

currents at least once a week at the inlet and outlet, and at or near the face of the entries; he shall keep a record of such measurements, which shall be entered in a book kept for that purpose, the said book to be open for inspection of the inspector of mines. He shall also on or about the first day of each month mail to the inspector a true copy of the said air measurements, stating also the number of persons employed in or about said mine, the number of mules and horses used, and the number of days worked in each month. Blanks for this purpose shall be furnished by the state to the inspector and by the inspector to each mine boss. The currents of air in mines shall be split so as to give separate currents to at least every fifty (50) persons at work, and the inspector of mines shall have discretion to order a separate current for a smaller number of men if special conditions render it necessary. Whenever the inspector of mines shall find men working without sufficient air or under any unsafe conditions he shall first give the operator a notice giving the facts and reasonable time to rectify the same, and upon his failure to do so he may order the men out of the mine or portion of said mine and at once order said mine, or part thereof, stopped until such mine or part of mine shall be put in proper condition. And the inspector of mines shall immediately bring suit against such operator for failure to comply with the provisions of this section. "Break throughs" or airways shall be made in each room and entry at least every forty-five feet. All "break throughs" or airways, except those last made near the working faces of the mine, shall be closed up and made air tight. The doors used in assisting or directing the ventilation of the mine when coal is being hauled through them, shall be opened and closed by persons designated to

do the same, so that the drivers or other persons may not cause the doors to stand open, but nothing herein shall prevent the use of automatic or mechanical doors, subject to the approval of the inspector of mines. In case the roadways or entries of any mine are so dry that the air becomes charged with dust, such roadways or entries shall be regularly and thoroughly sprinkled. And it shall be the duty of the inspector to see that this provision is carried out.

8580. (7440.) *Examinations by mine boss, duties, accident.*—12. The mine boss shall visit and examine every working place in the mine, at least every alternate day while the miners of such places are, or should be, at work, and shall examine and see that each and every working place is properly secured by timbering and that the safety of the mine is assured. He shall see that a sufficient supply of timbers are always on hand at the miners' working place. He shall also see that all loose coal, slate and rock overhead wherein miners have to travel to and from their work, are taken down or carefully secured. Whenever such mine boss shall have an unsafe place reported to him, he shall order and direct that the same be placed in a safe condition; and until such is done no person shall enter such place except for the purpose of making it safe. Whenever any person working in said mine shall learn of such unsafe place he shall at once notify the mine boss thereof and it shall be the duty of said mine boss to give him, properly filled out, an acknowledgment of such notice of the following form:

I hereby acknowledge receipt of notice from .....  
of the unsafe condition of the mines as follows: .....  
Dated this ..... day of ....., 19....

....., Mine Boss.

The possession by the person of such written acknowledgment shall be proof of the receipt of such notice by said mine boss whenever such question shall arise; and upon receipt of such notice said mine boss shall at once inspect such place and proceed to put the same in good and safe condition. As soon as such unsafe place has been repaired to the approval of said mine boss, he shall then give permission for the men to return to work therein, but no person shall return to work until such repairs have been made and permission given. Whenever any accident whatsoever has occurred in any mine which shall delay the ordinary and usual workings of such mine for twenty-four consecutive hours, or has resulted in such injury to any person as to cause death or require the attendance of a physician or surgeon, it shall be the duty of the person in charge of such mine to notify the inspector of mines of such accident without delay and it shall be the duty of said inspector to investigate and ascertain the cause of such accident as soon as his official duties will permit: Provided, That if loss of life shall occur by reason of any such accident said inspector shall immediately, with the coroner of the county in which such accident may have occurred, go to the scene of the accident. They shall investigate and ascertain the cause of such loss of life and have power to compel the attendance of witnesses and administer oaths or affirmations to them and the costs of such investigations shall be paid by the county in which the accident occurred, as costs of coroner's inquests are now paid.

8581. (7441.) *Traveling way, outlet, provisions for injured.*—13. There shall be cut out at the bottom of the shaft a traveling way sufficiently high and wide to enable

persons to pass the same in going from one side to the other, without passing over or under the cage. On all single track hauling roads wherever hauling is done by power, and on all gravity or incline planes in mines, upon which the persons employed in the mine must travel on foot to and from their work, places of refuge must be provided in the side wall, not less than three (3) feet in depth, measuring from side of car, and four (4) feet wide, and not more than twenty (20) yards apart, unless there is a clear space of at least three (3) feet between the side of the car and the side of the wall, which space shall be deemed sufficient for the safe passage of men. On all hauling roads in which the hauling is done by draft animals, whereon men have to pass to and from their work on foot, places of refuge must be cut in the side wall at least two and one-half ( $2\frac{1}{2}$ ) feet deep, measuring from the side of the car, and not more than twenty yards apart, but such places shall not be required in entries from which rooms are driven at regular intervals not exceeding twenty yards, and whenever there is a clear space of two and one-half ( $2\frac{1}{2}$ ) feet between the car and the rib, such places shall be deemed sufficient for the safe passage of men. All places of refuge shall be kept clear of obstructions and no material shall be stored therein, excepting in cases of emergency, nor be allowed to accumulate therein. At every mine where ten or more men are employed inside, it shall be the duty of the operator thereof to keep always on hand, readily accessible and near the mouth of the mine, a properly constructed and comfortable stretcher; a woolen and water-proof blanket; a roll of bandages in good condition for immediate use for bandaging and dressing wounds of any one injured in such mine;



a supply of linseed oil, lime, camphor, turpentine, anti-septic gauze, dressing and surgeon's splints for the dressing of broken bones; also to provide comfortable apartment near the mouth of the mine, in which any one so injured may rest while awaiting transportation to his home, and to provide for the speedy transportation of any one injured in such mine to his home.

(Acts 1907, p. 334. In force April 10, 1907.)

8582. *Width of entries.*—1. That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana to make, dig, construct, or cause to be made, dug or constructed any entry or track-way after the taking effect of this act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employe, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: Provided, That the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal fields of Indiana shall be exempt from the provisions of this act.

8583. *Penalty.*—2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this act shall be guilty of misdemeanor and upon conviction

thereof shall be fined in any sum not to exceed two hundred dollars, and to which fine may be added imprisonment in the county jail, not to exceed sixty days.

(Acts 1905, p. 65. In force April 15, 1905.)

8584. (7442.) *Approaching abandoned workings, water or gas.*—14. When approaching abandoned workings which are supposed to contain dangerous accumulation of water or gases, the excavation approaching such places shall not exceed eight feet in width, and there shall be constantly kept, at a sufficient distance (not less than three yards in advance) one bore hole near the center of the workings, and sufficient flank bore holes on each side. When two or more veins are worked in the same mine they shall be so operated that no danger will occur to the miners working in either vein.

8585. (7443.) *Timber supply, blackboard.*—15. The operator of any mine shall keep a sufficient supply of timber at the mine, and deliver all props, caps and timber (of proper lengths) to the rooms of the workmen, when needed and required, so the employes may, at all times, be able to properly secure the workings from caving in. Every operator operating mines in this state shall place a blackboard near the mine entrance sufficiently large, stating thereon in figures the lengths of all timber in use in said mine. The miners shall register thereon, when needing timber for securing their working places, their respective numbers, under the figures indicating the proper lengths of timber required.

8586. (7444.) *Injury to safety appliances.*—16. Any person who shall, knowingly, injure or interfere with any

safety lamp, air course, or with any brattice or obstruct or throw open doors, or disturb any part of the machinery, or ride upon a loaded car or wagon in any mine, or do any act whereby the lives or health of the persons or the security of the mines or machinery are endangered, shall be deemed guilty of a misdemeanor.

8587. (7445.) *Explosives, blasting or shooting, tools.*—

17. Whenever any person is about to open a keg or box containing powder, or other explosives, he shall place and keep his light at least five feet distant from said explosive, and in such a position that the air current can not carry sparks to it; and no person shall approach nearer than five feet to any open box or keg containing powder or other explosives with a light or pipe or any other thing containing fire. In any mines of this state, where coal is mined by "blasting off the solid" it shall be unlawful for any miner or other person to drill any hole, for the purpose of blasting, more than one foot past the end of his cutting or "loose end" or to prepare a "shot" in such a way that the distance from the hole to the loose end shall be more than five feet, measured at right angles to the direction of the hole. In the process of charging or tamping a hole, no person shall use any iron or steel needle or tool, except as herein provided. The needle used in preparing the blast shall be made of copper, and the tamping bar shall be tipped with at least five inches of copper. No coal dust or any material that is inflammable, or that may create a spark, shall be used for tamping and some soft material shall be placed next to the cartridge or explosive.

8588. (7446.) *Illuminating oils.*—18. Only a pure animal or vegetable oil, or other oils that shall be as free

from smoke as a pure animal or vegetable oil, and not the product of rosin, and which shall, in inspection, comply with the following list, shall be used for illuminating purposes in the mines of this state: All such oils must be tested by the state supervisor of oil inspection or his deputies at 70 degrees Fahrenheit. The specific gravity of the oil must not exceed 24 degrees. The test of the oil must be made in a glass jar one and five-tenths (1 5-10) inches in diameter by seven (7) inches in depth. If the oil be above 45 degrees and below 70 degrees Fahrenheit, it must be raised to a temperature of about 80 degrees Fahrenheit, when, after being well shaken, it shall be allowed to cool gradually to a temperature of 70 degrees Fahrenheit before being finally tested. In testing the gravity of the oil the hydrometer must be, when possible, read from below, and the last line which appears under the surface of the oil shall be regarded as the true reading. In case the oil under test should be opaque or turbid, one-half of the capillary attraction shall be deemed and taken to be the true reading. When the oil is tested under difficult circumstances, an allowance of one-half degree may be made for possible error before condemning the oil for the use in the mine. All oil sold to be used for illuminating purposes in the mines of the state shall be contained in barrels or packages, branded conspicuously with the name of the dealer, the specific gravity of the oil and the date of shipment. Any individual, firm, corporation or company that sells or offers for sale any oil other than provided in section 18 to be used for illuminating purposes in coal or other mines of the state, or the individual, firm, corporation, company or person having in charge the operation or running of any mine, who permits

the use in his or their mine of any oil for illuminating purposes other than provided for in section 18, or any employe in any mine of this state, who uses with a knowledge of its character, a quality of oil other than is provided for in section 18, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five (\$5) dollars nor more than twenty-five (\$25) dollars.

8589. (7447.) *Check-weighman*.—19. Whenever the mining of coal is paid for by weight, the miners employed in mining the same shall have the right of selecting and keeping in the weigh office, or at the place of weighing coal, a check-weighman, who shall be vested with the same rights as described in section 9 of this act, said check-weighman to be paid by said miners.

8590. (7448.) *Inspector of mines, appointment, assistants, salaries, duties*.—20. The state geologist shall appoint an inspector of mines, who shall hold his office for two years or until his successor shall be appointed and qualified, and he shall require all applicants for such office to pass an examination touching their qualifications and fitness to discharge the duties thereof before making such appointment. And the state geologist is hereby empowered to make such rules and regulations in conducting such examinations as in his judgment will test the competency and fitness of such applicants: Providing, further, That the state geologist shall give a certificate of appointment to the person appointed, which certificate shall entitle such appointee, when qualified, to do and perform all duties of his office as inspector of mines. The inspector of mines shall appoint two assistants, who have each passed such

examination touching their qualifications for such position as may be prescribed by him. The inspector of mines shall execute certificates of such appointments and deliver the same to each of such assistants, who shall qualify by each executing a bond and taking an oath in the manner and form provided by this act, and when so qualified, each such assistant is authorized and empowered to draw his salary and to perform all duties of his office as prescribed by this act. Each of such assistants shall be subject to orders and directions of the inspector of mines, and, in pursuance of such orders and directions, is empowered to do any and all acts to perform all duties incumbent upon the inspector of mines. They shall each make a detailed and itemized report as often as required, to the inspector of mines, of the work performed by him and shall hold his office subject to removal at any time by such inspector of mines for cause. The inspector of mines and his assistants, shall be residents of the State of Indiana for at least five (5) years immediately preceding their appointment to office, and shall be practical miners of at least ten years' experience in actual mining, and no person shall be eligible to hold the office of inspector of mines or assistant inspector of mines who is or may be pecuniarily interested in any coal mine within this state either directly or indirectly. The inspector of mines and his assistants before entering upon the duties of their offices, shall each execute a bond payable to the State of Indiana, with good and sufficient surety, in the sum of one thousand dollars (\$1,000), and shall take and subscribe to an oath to be indorsed upon the back of each bond for the faithful performance of the duties of the office, which bond shall be approved by and filed with the secre-

tary of state. The inspector of mines shall receive as compensation for his services the sum of one thousand eight hundred dollars (\$1,800) per annum, and each assistant inspector of mines shall receive as compensation for his services the sum of one thousand two hundred dollars (\$1,200) per annum. And for expenses they shall receive the sum actually and necessarily expended for that purpose, in the discharge of their official duties, all to be paid quarterly by the state treasurer from funds in the state treasury not otherwise appropriated. All expense bills shall be sworn to and shall show the items of expense in detail. Said inspector of mines may also appoint a secretary to assist him in the discharge of his duties, who shall receive a salary of six hundred dollars (\$600) per annum. It shall be the duty of the inspector of mines appointed under this act to enter, examine and inspect any and all coal mines, and the works and machinery belonging thereto, at any reasonable time, by day or by night, but so as not to hinder or obstruct the working of any coal mine more than is reasonably necessary in the discharge of his duties; and the operator of such coal mine is hereby required to furnish the necessary facilities for such entry, examination and inspection. Should the operator fail or refuse to permit such inspection or furnish such facilities the operator so failing shall be deemed to have committed a misdemeanor, and it is hereby made the duty of such inspector to charge such operator with such violation, under oath, in any court having jurisdiction. The inspector appointed under this act shall devote his entire time and attention to the duties of his office. He, or his assistants, shall make personal inspection, at least twice each year, of all coal

mines in this state, and shall see that every precaution is taken to insure the health and safety of the workmen therein employed, that the provisions and requirements of this act are faithfully carried out, and that the penalties of the law are enforced against all who wilfully disobey its requirements. He shall also collect and tabulate the following facts: The number and thickness of each vein or stratum of coal and their respective depths below the surface, which are now worked or may hereafter be worked; the kind or quality of coal; how the same is mined, whether by shaft, slope or drift; the number of mines in operation in each county, the owners thereof; the number of men employed in each mine, and the aggregate yearly production of tons from each mine; estimate the amount of capital employed at each mine; and give any other information relative to coal and mining that he may deem necessary; all of which facts, so tabulated, together with a statement of the condition of mines as to safety and ventilation, he shall freely set forth in an annual report to the state geologist, together with his recommendation as to such other legislation on the subject of mining as he may think proper. It shall be the duty of the inspector of mines, in addition to his other duties, to examine all scales used at any mine for the purpose of weighing coal taken out of said mine. The scales shall be tested by sealed weights; the same shall be furnished to said inspector of mines by the auditor of state on requisition, the cost of which shall be audited by the auditor of state and paid out of any money in the state treasury not otherwise appropriated. And on inspection, if the scales are found incorrect, and after written notice by the inspector of mines, it shall be unlawful for any



operator to use or suffer the same to be used until the scales are adjusted to weigh correctly. The provisions of this law shall apply to all mines except to mines employing less than ten men. And it shall be the duty of the inspector of mines to see to the strict enforcement of all laws relating to mines and mining, to investigate all violations of the law relating thereto, file complaints and make affidavits against such violators before the proper court of justice and to see to the enforcement of all penalties prescribed by the statutes of the state for disobedience to its provisions relating to mines and mining, and failure to do so may be sufficient cause for his removal from office. The inspector of mines shall make an annual report to the state geologist of all matter now required by law to be reported, which report shall be published with the report of the state geologist, and shall in every respect comply with the laws pertaining to the inspection of mines.

8591. (7449.) *Examinations by inspector, places, fee, notice.*—21. It shall be the duty of the inspector of mines to hold examinations for certificates of service and competency in each of the cities of Brazil, Terre Haute, Washington and Evansville, and to publish notice of such examinations, stating the time and place where examinations are to be held, and shall make and publish rules and regulations under which such examination shall be conducted. For the purpose of providing for the expense of holding the examinations and issuing the certificate herein provided for, each applicant, before entering upon examination, shall pay the inspector of mines one dollar, a receipt for which must be indorsed upon each certificate before it becomes effective. Examinations for certificates of service or competency

shall be public and open to all citizens of the United States, and at least fifteen days' notice of such examinations shall be given by publication in a newspaper published in the city where such examination is to be held. No certificate shall be issued to any person entitling him to serve in more than one of the capacities set out in this section, but two or more certificates may be issued to the same person on proper examination.

8592. (7450.) *Certificate of competency.*—22. Certificates of competency shall be issued by the inspector of mines to any person who shall prove satisfactory upon examination, either written or oral, or both, as may be prescribed by such inspector, that he is qualified by experience and technical knowledge to perform the duties of either mine boss, fire boss, or hoisting engineer. Certificates of service shall be issued by the inspector of mines to any person who shall furnish satisfactory proof that he has been engaged as, and has successfully discharged the duties of mine boss, fire boss, or hoisting engineer at mines in this state for three years preceding the granting of such certificate. It shall be unlawful for any person to serve in the capacity of mine boss, fire boss, or hoisting engineer at any mine without having first received from the inspector of mines a certificate of service competency. It shall be unlawful for any operator of any mine in this state to employ any person in the capacity of mine boss, fire boss, or hoisting engineer unless such person has a certificate from the inspector of mines.

8593. (7451.) *Monthly report to inspector.*—23. The operator of every mine shall be and is hereby required to report to the inspector of mines on or before the 15th day

of each calendar month the name of the person in charge of such mine, the number of tons of coal produced at such mine during the preceding month, the amount of wages paid employes during such month, the amount of money expended for improvements during said month, together with such other information as may be necessary to enable said inspector to prepare his annual report as required by law.

8594. (7452.) *Who may not be employed.*—24. No male person under the age of fourteen years or female of any age shall be permitted to enter any mine in this state for the purpose of employment therein, and the parents or guardians of boys shall be required to furnish an affidavit as to the age of said boy or boys when there is any doubt in regard to their age, and in all cases of miners applying for work the operator of any mine shall see that the provisions of this section are not violated.

8595. (7453.) *Wages, transfer, payment by check.*—25. Whenever any merchant or dealer in goods or merchandise, or any other person, shall take from any employe or laborer for wages, who labors in or about any mine in this state, an assignment of such employe's wages, earned or unearned, due or to become due, or shall take from such employe or laborer any order on his employer for any such wages, and shall issue or give to any such employe or laborer in consideration of or in payment for any such assignment or transfer or order, any check, other than a check on a solvent bank, or any ticket, token or device payable or redeemable, or purporting to be payable or redeemable, or agreed to be payable or redeemable, in goods, wares, or merchandise or anything other than lawful

money of the United States, such check, ticket, token or device shall at once become due and payable in lawful money of the United States, for and to the extent of the full amount of the wages assigned or relinquished for it, and the holder of such checks, ticket, token or device shall, after demand, have the right to collect the same, with reasonable attorney's fees, by suit in any court of competent jurisdiction.

8596. (7454.) *Liens, labor or royalty.*—26. The miners and other persons employed and working in and about the mines and others interested in the rental or royalty on the coal mined therein, shall have a lien on said mine and all machinery and fixtures connected therewith, and everything used in and about the mine, for work and labor performed within two months, and for royalty on the coal mined for any length of time not exceeding two months; and such liens shall be paramount to and have priority over all other liens, except the liens of the state taxes; and such liens shall have priority, as against each other, in the order in which they accrued, and for labor over that for royalty on coal. Any person to acquire such lien shall file in the recorder's office of the county where the mine is situated, within sixty (60) days from the time the payment became due, a notice of his intention to hold a lien upon such property for the amount of his claim, stating in such notice the amount of his claim, and the name of the coal works, if known, or any other designation describing the location of said mine; and the recorder shall record the said notice, when presented, in a book used for recording mechanic's liens, for which the recorder shall receive a fee of twenty-five cents. Suits brought to enforce any

lien herein created shall be brought within one year from the date of filing in the recorder's office; and all judgments rendered on the foreclosure of such liens shall include the amount of the claim found to be due, with interest on same from the time due, and with a reasonable attorney's fee, the judgment to be collected without relief from valuation, appraisalment or stay laws.

8597. (7455.) *Injuries, liability.*—27. For any injuries to person, or persons, or property, occasioned by any violation of this act, or failure to comply with any of its provisions, a right of action against the operator shall accrue to the party injured for the direct injury sustained thereby; and in case of loss of life by reason of such violation, a right of action shall accrue in favor of the personal representatives of the deceased against such operator, if the deceased might have maintained an action, had he lived, against the operator for an injury for the same act or omission. The actions shall be commenced within two years. The damages in case of death can not exceed ten thousand (\$10,000) dollars, and must inure to the exclusive benefit of the widow and children, if any, or next of kin, to be distributed in the same manner as personal property of the deceased. (As amended, Acts 1909, p. 259.)

8598. (7456.) *Penalties.*—28. Any willful neglect, refusal or failure to do the things required to be done by any section, clause or provision of this act, on the part of the person or persons herein required to do them, or any violation of the provisions or requirements hereof, or any attempt to obstruct or interfere with any inspector of mines in the discharge of the duties herein imposed upon him, or any refusal to comply with the instructions of an

inspector of mines by authority of this act, shall be deemed a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for a period not exceeding six months, or both, at the discretion of the court: Provided, That the foregoing shall not apply to sections in this act which have special penalties provided for them.

(Acts 1903, p. 176. In force March 5, 1903.)

8599. (7457.) *Examination by adjacent owners.*—1. That the owner, tenant or occupant of any land or lands on which a coal mine is opened and operated, and also the person or persons owning or operating such mine, or the agent of any of them, shall permit any person or persons interested in or having title to any land or lands coterminous with the land or lands on which such mine is located, to have ingress and egress together with surveyors and assistants, into said mine, for the purpose of measuring, exploring and surveying such mine, for the purpose of ascertaining whether or not any coal has been, or is being, mined and taken from lands so owned by such person or persons; it being provided that such survey and measurements shall be made not oftener than once a month and shall be made at the expense of the party making such measurements or survey.

8600. (7458.) *Consent refused, forfeiture.*—2. Any owner, tenant, occupant, agent, or mine owner or operator, who shall refuse permission to permit such measurements, exploration or survey, as provided for in the last preceding section of this act, shall forfeit the sum of one hundred dollars for each refusal to the person so refused, which

shall be collectible by suit in any court of competent jurisdiction in the state.

8601. (7459.) *Facilities afforded, refusal, forfeiture.*—

3. If the owner of any coterminous land, or his agent, desires to make an examination, measurement or survey of any such mine or any part thereof, situated and operated on adjoining lands, then the operator or superintendent of such mine shall upon demand, provide every proper facility for making such survey with accuracy and safety to the owner of such coterminous land or to any surveyor or assistants who may make such examination or survey, by driving good air into and dangerous gases from the part to be so examined and surveyed, and shall remove any obstructions that will prevent such survey, and shall provide any assistance if so called for by the surveyor, so that the encroachments, if any, on such coterminous lands may be clearly determined by such examination or survey. Any person violating the provisions of this section shall forfeit twenty dollars a day for each day which he refuses to comply with such demand, which amount such coterminous owner may collect by suit in any court of the state.

(Acts 1907, p. 347. In force April 10, 1907.)

8602. *Explosives in mines.*—1. That it shall be unlawful for any person to have in his possession, or under his control within any coal mine in the State of Indiana, any dynamite cap, dynamite or other high explosive without first obtaining in writing the consent of the mine foreman or other person in charge of the operation of said mine, setting forth the use for which any such cap or explosive may be particularly intended.

8603. *Shots, preparations, use of powder.*—2. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state, to prepare any "shot" in such a way that the distance from the drill hole to the "loose end," chance or end of cutting shall be more than five feet measured at right angles to the direction of the hole; or to place any charge of powder or other explosive in any drill hole prepared for any "shot" in which the breast of coal to be dislodged is of greater width than the depth of the drill hole; or to use in preparing any "shot" more than six pounds of powder; or to place any powder in any drill hole for the purpose of preparing any "shot" without measuring the amount so placed therein with a substantial measure so made as to indicate the weight of blasting powder measured therein; or to open a keg, can or other package containing powder, by means of pick or in any other manner except in pursuance of the manner provided in the manufacture of such keg, can or package; or to sell or offer for sale any keg, can or package containing powder, unless such can, keg or package be provided with a sufficient device for opening the same and permitting the discharge therefrom of all the powder therein contained; or to store any blasting powder, dynamite or other high explosive in any coal mine; or to prepare any drill bit more than three and one-quarter ( $3\frac{1}{4}$ ) inches in diameter to be used in boring holes for the purpose of preparing any shot or to use any dynamite or other high explosive in conjunction with black powder. It shall be unlawful for any owner, operator or lessee of any coal mine, coal shaft or slope coal mine to refuse, fail or neglect to sharpen and prepare for use any bit for preparing drill holes, if such bit is three and one-



quarter ( $3\frac{1}{4}$ ) inches in diameter, or less, and such owner, operator or lessee, or his representative, has been requested to prepare and sharpen the same by any owner of such bit or bits. (As amended, Acts 1909, p. 330.)

The original of this section was amended in 1908, Acts Spec. Sess. 1908, p. 15.

8604. *Drilling.*—3. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state, except in any mine producing block coal, to drill any hole past the end of his cutting "loose end" or "chance."

8605. *Prima facie violations.*—4. If upon inspection of any working place in any coal mine there shall be found the remnants of drill holes drilled past the cutting, loose end or chance, or the remnants of any shot measuring more than the maximum width, or if any miner shall be found to have in his possession in his working place any keg, can or package containing powder and which has been opened in any other manner than that provided by law, the same or either thereof respectively shall be and constitute prima facie evidence that the workman in whose working place such evidence is found guilty of a violation of sections 2 or 3 of this act, or a part thereof, as the case may be.

8606. *Simultaneous explosions.*—5. It shall be unlawful in any coal mine for any person to explode or light any shot in any working place simultaneously with the explosion or lighting of any shot by the same or any other person in any other working place on the same entry, except in working places where the coal is under cut by machinery.

8607. *Stairway.*—6. That at all coal mines where any escapeway or manway is hereafter constructed, the same shall be provided with a good and sufficient stairway, ac-

according to the specifications for mine stairways now provided by law, and of suitable design and strength to accomplish the purpose for which it is intended.

8608. *Cage and cage landing.*—7. It shall be unlawful for any person desiring carriage upon any cage to approach nearer than six (6) feet to any "cage landing" when such cage is not at rest at such landing; or to crowd on to said cage in a rude or boisterous manner; or to enter upon any such cage when there are already upon the same one person for each three square feet of the floor of such cage: Provided, That nothing herein contained shall affect any person in charge of the operation of such cage or the machinery moving or affecting the same: And, provided further, That as many persons may after the passage of this act enter a cage for carriage as the same will accommodate, giving each person three square feet of floor space.

8609. *Material for tamping.*—8. It shall be the duty of the operator or owner of any coal mine wherein fire or other non-inflammable material suitable for use in tamping in preparing shots can not be readily obtained, to provide and deposit within said mine such material, and at points within five hundred feet from the face of each entry in such mine. In case any dispute may arise as to the construction proper to be placed upon the above provision, or as to the duty of any such operator or owner thereunder, such dispute shall be finally determined by the inspector of mines.

8610. *Shot firers.*—9. That at any coal mine in the state where the miners working therein so elect, persons may be employed to act as shot firers, and their wages shall be paid by the miners working therein: Provided,

That nothing herein contained shall affect any existing contract as to shot firers.

8611. *Mine inspector, assistants, duties, pay.*—10. The result of all coal mine inspections made by the inspector of mines or any of his assistants, showing all his conclusions as to the condition of safety of the mines and orders given in the inspection of any coal mine shall be posted in writing at the entrance to such mine immediately upon the conclusion of each inspection. The inspector of mines or his assistants shall make personal inspection of all coal mines in the state at least three times each year instead of twice each year, as heretofore provided by law, and to enable said inspector and his assistants to discharge all the duties created by this act and other acts the number of his assistants is hereby increased from two to four. Such additional assistants shall possess the same qualifications and perform the same duties required by this and any and all other laws, and shall be appointed, empowered, and in all things governed in the same manner and by the same laws applicable to assistants to such inspector of mines, heretofore existing under former laws. Such additional assistants shall each receive for his services the sum of one thousand two hundred dollars per annum; and for expenses they shall receive the sum actually and necessarily expended for that purpose in the discharge of their official duties, all to be paid quarterly by the state treasurer from funds in the state treasury not otherwise appropriated. All expense shall be sworn to and shall show the items of expense in detail. Such inspector and each of his assistants are hereby charged with the duty of enforcing this act and all other laws relating to the health and safety of per-

sons and property employed and used in and about the coal mines of the state.

8612. *Police powers.*—11. The inspector of mines and each of his assistants are hereby empowered to act as police officers, with full powers to arrest and detain any person found violating any provisions of this act or any other mining law, or engaged in any attempt to violate any such law or part thereof, or against whom there is found any evidence of a previous violation of such law: Provided, however, That no such person shall be detained for any period of time longer than twenty-four hours without warrant or the filing of a charge against him in a court of competent jurisdiction. Such inspector and each of his assistants shall also have power to immediately stop the operation of any coal mine, or part thereof, in which any dangerous or unlawful condition is found: Provided, however, That where conditions exist justifying him to do so, he may grant a reasonable length of time for making necessary repairs: And, provided further, That where any stop is enforced, such inspector and his assistants shall each have power to subsequently allow such mine or part of mine to be reopened when the dangerous or unlawful conditions have been remedied or removed, so that they no longer exist.

8613. *Sprinkling, inspector may order.*—12. The inspector of mines shall have power in his discretion to order the sprinkling of any coal mine or part of mine by notice in writing to the operator thereof, or person in charge of the same, and after receiving such notice it shall be unlawful for any person to act in violation thereof and to omit such sprinkling. Copies of any notice given hereunder

shall be posted at the mine entrance by the inspector of mines.

8614. *Certificates of service.*—13. After the passage of this act no further certificates of service shall be issued by the inspector of mines to any person to act as mine boss, fire boss or hoisting engineer: Provided, however, That nothing herein contained shall affect any certificate of service heretofore issued.

8615. *Penalties.*—14. Any person violating any provision of this act or wilfully refusing, neglecting or failing to do anything required to be done by any provision hereof by such person or obstructing or attempting to obstruct or interfere with the inspector of mines or any of his assistants in the discharge of any duty imposed by law, or refusing, failing or neglecting to comply with the proper orders of the inspector of mines, or his assistants, shall be guilty of a misdemeanor punishable on conviction by a fine not exceeding five hundred dollars, to which may be added imprisonment in the county jail for a period not exceeding six months, in the discretion of the court or jury trying any such cause.

8616. *Inspectors, failure in duties, penalty.*—15. Whoever, being an inspector of mines or an assistant thereof, shall fail, neglect or refuse to perform any duty required of him by this or any other law relating to the health and safety of persons employed in coal mines and matters connected therewith, shall upon conviction thereof be fined not to exceed five hundred dollars, and upon a second conviction for an offense hereunder shall, upon the certification of judgment thereof to the proper officer holding the power of appointing his successor, be immediately removed from office by such officer without any further proceedings.

8617. *Eligibles, preparation of questions.*—16. On, or before January 1, 1909, and biennially thereafter, it shall be the duty of the state geologist and chemist to the state board of health to prepare a list of questions on the subjects of mine engineering, chemistry as applied to coal mining, and the practical operations of coal mining as concerns the coal mining industry in Indiana. These questions shall be so prepared and the answers so graded that it shall be possible for an applicant to make twenty-five (25) points on the questions relating to mine engineering; twenty-five (25) points on the questions relating to chemistry as applied to coal mining; and fifty (50) points on the questions relating to the practical operations of coal mining.

8618. *Examinations by state chemist.*—17. Within fifteen (15) days from the first day of January, 1909, and biennially thereafter, the chemist to the state board of health shall hold an examination using the said list of prepared questions, in the state capitol, which examination shall be open to any male citizen of the state of over twenty-one (21) years of age, of good moral character, who has had at least five years' experience as a practical coal miner, and shall grade the manuscripts of all persons taking such examinations, and shall prepare and certify to the state geologist an eligible list of all applicants who shall make a grade of eighty-five per cent. or greater.

8619. *State geologist, appointment of inspector.*—18. The state geologist immediately thereafter shall appoint from said eligible list an inspector of mines to serve for a period of two (2) years; and the inspector of mines thus appointed shall appoint from eligible list his deputies, as now or hereafter may be provided by law. Said inspector

shall qualify as now provided by law, and shall have all the powers, duties and compensation as now provided by law, and shall be subject to removal by said geologist for cause, as provided by law. In case of death, resignation or removal of the inspector of mines, the state geologist shall appoint his successor from said eligible list.

8620. *Assistant inspector.*—19. The assistant inspector of mines shall qualify as now provided by law, and shall have the same powers, duties and compensation, with traveling expenses, as now provided by law. Said assistant inspectors of mines may be removed by the inspector of mines, as now provided by law. In case of death, resignation or removal of any of said assistant inspectors of mines, the inspector of mines shall appoint his successor from said eligible list.

8621. *Eligible list exhausted.*—20. In case the said eligible list shall be exhausted before the date of regular biennial examination, appointments shall be made from the list of applicants who passed the last examination: Provided, That the person holding the highest grade shall be first chosen.

8622. *Act cumulative.*—21. The provisions of this act shall be cumulative of other laws upon the subject of coal mining: Provided, however, That all laws and parts of laws in conflict herewith are hereby repealed.

(Acts 1907, p. 193. In force April 10, 1907.)

8623. *Wash houses for laborers.*—1. That for the protection of the health of the employes herein mentioned it shall be the duty of the owner, operator, lessee, superintendent of, or other persons in charge of every coal mine or

colliery, or other place where laborers employed are surrounded by or affected by similar conditions as employees in coal mines, at the request in writing of twenty (20) or more employees of such mine or place, or in event there are less than twenty (20) men employed, then upon the written request of one-third ( $\frac{1}{3}$ ) of the number of employees employed, to provide a suitable wash room or wash house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe keeping of clothing: Provided, however, That the owner, operator, lessee, superintendent of or other person in charge of such mine or place as aforesaid shall not be required to furnish soap or towels.

8624. *Penalty.*—2. If any person, persons or corporation shall neglect or fail to comply with the provisions of this act, or shall maliciously injure or destroy or cause to be injured or destroyed said building or room, or any part thereof or any of its appliances or fittings used for supplying light, heat or water therein, or shall do any act tending to the injury or destruction thereof, he or they shall be guilty of misdemeanor, and upon conviction shall be fined in any sum not to exceed five hundred (\$500) dollars, to which fine may be added imprisonment in the county jail not to exceed sixty (60) days.

(Acts 1911, p. 658. In force April 1, 1911.)



8624a. *Coal mining, examining board.*—1. That the business of mining coal is hereby declared a dangerous occupation, industry and business subject to the provisions of this act. In every county in this state where the business of coal mining is carried on or shall hereafter be carried on, the board of county commissioners of such counties shall appoint a miners' examining board, said board to consist of two resident coal miners who shall have had at least five years' practical experience in mining coal and shall at the time of their appointment be engaged as miners of coal in the county wherein they are appointed and one resident of said county who is a coal operator or mine owner. It shall be lawful for the coal miners individually or through their organizations to recommend coal miners for such appointment on such boards and for the coal operators or mine owners to recommend some mine owner or coal operator for such appointment. Said members of said boards shall hold office until the first Monday of the January next following their appointment, or until their successors shall have been appointed and qualified. Any vacancy occurring on any of the said boards may be filled by the board of county commissioners at any regular session of said board. The first appointments shall be made immediately after this act becomes effective and thereafter on the first Monday of each January of each year, or any time thereafter: Provided, That the provisions of this act shall not apply to any county in this state unless there is located in such county a coal mine employing ten (10) or more miners.

8624b. *Organization of board, oath, compensation.*—2. Each board shall organize by electing one of their number president and one member as secretary and one as treas-

urer: Provided, That the same member may serve as both secretary and treasurer. Each member shall within ten days after his appointment qualify by taking oath or affirmation before some qualified officer that he will faithfully, honestly and impartially discharge his official duties, which oath shall be filed with the auditor of the county in which he resides and from which he is appointed. The member being chosen as treasurer shall qualify by filing with the auditor his bond in the penal sum of five hundred dollars, which bond shall be approved by the board of county commissioners. Members of said board shall receive as compensation for their services the sum of four (\$4.00) dollars per day for each day actually engaged in their official duties, and all legitimate and necessary expenses incurred in attending the meetings of said board, which sum shall be allowed by the county commissioners, and money for the payment of the same shall be appropriated by the common council, and the county treasurer shall pay the same.

8624c. *Workman's certificate, fee, forms.*—3. After the 15th day of May, 1911, no person shall be employed or engaged as a miner in any coal mine in this state without first obtaining a certificate of competency and qualification so to do from the miners' examining board of some county in the State of Indiana: Provided, That the above provisions shall not prevent the employment of a person not having such certificate to work in the same room with or under the direction of a miner having such certificate, for the purpose of becoming qualified to become a miner and to receive such certificate under the provisions of the act: Provided, That any male person desiring to work with a qualified miner to become qualified shall first obtain a per-

mit from the miners' examining board by stating his age, nativity and residence and paying the sum of one (\$1.00) dollar therefor. The miners' examining board shall grant a permit to all applicants who are of legal age and who have such intelligence and character that they will not be a menace to life and property. It shall be the duty of the state mine inspector to prepare the form of certificates, permits and books specified and provided for in this act and it shall be the duty of all miners' examining boards in this state to use and adopt the forms prescribed and prepared by the state mine inspector. All expenses provided for and authorized by this act shall be paid out of the county treasury of the counties where the boards contracting the same are located.

8624d. *Registry record, contents.*—4. The said board shall keep a permanent book for the purpose of registering the names of all applicants for certificates of competency and qualifications and of all persons applying for permits to work for the purpose of learning the business or occupation of mining. Said book shall contain a printed form of application which shall be filled out, signed and sworn to by each applicant showing his name, address, nativity, date of birth, race and residence of parents, if living, and what experience, if any, such applicant has had in mining and the location of mines where such applicant has been employed, if at all, for at least two years prior to the application; all applicants shall sign such application and be sworn to the same by some member of the miners' examining board, or other authorized person.

8624e. *Fee on application, accounting, names.*—5. Each applicant for a certificate or permit shall pay said miners'

examining board at the time of application a fee of one (\$1.00) dollar. All money received by said board shall be paid over to the county treasurer at least once a month. The said board shall annually on the first Wednesday of January of each year report to the board of county commissioners appointing them the names of all persons applying for certificates and permits, the amount of money received and disbursed, the names of all persons granted certificates and permits and the names of all persons refused certificates and permits. In every case where an applicant is refused a permit or certificate it shall be the duty of said examining board to keep a complete record of the questions asked and answers given and the secretary of said board shall furnish a copy of same to any applicant desiring an appeal to any court of competent jurisdiction free of charge.

8624f. *Monthly meetings, public examinations, language.*—6. It shall be the duty of said board to meet on the first Wednesday of each month, but when the said day falls on a legal holiday then the day following, and said meeting shall be public, and when necessary the meeting shall be continued from day to day for not to exceed three days, if business requires: Provided, That for the first and second sessions the respective boards may continue in session for a period not to exceed ten days, if business requires. The examination of all applicants shall be public and in the English language: Provided, however, That in the event of a non-English speaking applicant so desiring, an interpreter shall be employed, which interpreter shall first be sworn to correctly and truly interpret all questions and answers in the performance of his duty. The members

of the board shall have power and authority to administer oaths and all applicants for certificates and permits shall be first sworn and orally examined in regard to their qualifications. All applicants for qualification certificates may be required to furnish satisfactory evidence of their experience in mining and shall possess sufficient knowledge to be able to understand warnings in regard to dangerous gases and explosives. In no event shall an applicant be deemed competent and qualified unless he appears in person before said board and answers intelligently at least fifteen questions propounded to him pertaining to practical mining, which questions shall cover dangerous gases and other combustibles and explosives and the preparation of shots and timbering, but in no event shall technical questions be included in the examination: Provided further, That when an applicant possess a miner's qualification certificate of some other state where a miner's qualification law may be in effect, he shall be entitled to a qualification certificate in this state without the formality of an examination. Said board shall keep accurate records in permanent form of all proceedings of all sessions held by them containing the names and addresses of all applicants for permits and certificates and the action taken thereon, which records shall be open for inspection at all times by persons interested. All sessions shall be held in public but the boards shall, when requested by three miners, or may on their own motion, separate the applicants and exclude those not examined from the room where the examination is being held. It shall be unlawful for any person to disclose to any applicant before his examination the questions to be asked or the answers thereto: Provided, That in counties in this

state where according to the last report of the state mine inspector there are less than one hundred and fifty coal miners employed the miners' examining board of such counties shall hold meetings only on the first Wednesdays of January, April, July and October of each year. The miners' examining board in any county shall employ an interpreter at any meeting where a majority deem it necessary, which interpreter shall first be sworn to correctly and truly interpret all questions and answers in the performance of his duty and for any false interpretation of fraudulent acts or violations of any provision of this act shall be subject to the punishment prescribed in section 12 of this act.

8624g. *Competency, determination, certificate, no transfer.*—7. All applicants who shall answer fifteen questions correctly and shall be otherwise qualified and adjudged competent under this act shall be granted a certificate, which certificate shall not be transferable. No certificate shall be issued unless signed by at least two members of the board. No permit shall be transferable nor issued to any minor under the age prescribed by law.

8624h. *Refusal of certificate, appeal, fraud.*—8. Any applicant being refused a certificate or permit by any miners' examining board and feeling himself aggrieved may appeal to the circuit or superior court located in the county where such board is located and such court shall have the power to issue such orders therein as may be lawful and just, but no costs shall be assessed or adjudged against any member of a miners' examining board upon such review of their action. The prosecuting attorney, state mine inspector or any member of any miners' examining

board having information that any person has obtained a certificate or permit by means of fraud, misrepresentation or by other unlawful means, or has permitted or is permitting any other person to use his certificate or permit, or that any person is using the certificate or permit which was issued to another person shall file information before the judge of the circuit or superior court located in the county where such person is resident or employed and cause summons to be issued as in civil cases: Provided, however, If such officers fail or refuse to file such information, then any private citizen may file such information on the relation of the State of Indiana. If the court or jury shall after a trial or hearing in such cause, find that such certificate or permit has been unlawfully or wrongfully issued, or that such person has used the certificate or permit of another or permitted another to use his certificate or permit, then the judgment shall be that such certificate or permit be revoked and that costs be adjudged as in other civil cases: Provided further, That any person who obtains a certificate or permit by means of fraud, misrepresentation or by other unlawful means, or has permitted or is permitting any other person to use his certificate or permit, or any person who uses or permits to be used a certificate or permit to another shall also be subject to the penalties provided in section 12 of this act.

8624i. *Permit, working without.*—9. No person shall hereafter be engaged as a miner in any coal mine in this state in which ten (10) or more miners are employed without first obtaining a permit or certificate as required by this act. No person, firm, or corporation shall employ any person as a miner who does not hold a certificate or a

permit, as aforesaid, and no mine foreman or superintendent or other person shall permit or suffer any person to be employed under him in any mine under his charge or under his supervision, as a miner, who does not hold such certificate or permit.

8624j. *Two years' experience, certificate.*—10. No certificate of competency or qualification shall be granted to any applicant who has had two years' experience in mine work: Provided, That persons applying for certificates before the first day of July, 1911, may be granted certificates without examination, provided they shall establish by satisfactory evidence of at least three resident householders that they have been continuously engaged in practical mining two years or more prior to the time this act becomes effective.

8624k. *Mine inspector, investigation.*—11. It shall be the duty of the state mine inspector and all his deputies and all miners' examining boards and prosecuting attorneys to investigate all complaints of the violation of this law and to prosecute all such violations.

8624l. *Penalty.*—12. Any person, firm, or corporation violating any provision of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred (\$100.00) dollars and not more than five hundred (\$500.00) dollars, to which may be added imprisonment not to exceed six months in the county jail or workhouse. Any member of any miners' examining board, in addition to said penalties shall forfeit his office upon being convicted of violating any provision of this act.

Section 13 provides that the act shall take effect on April 1, 1911.



## APPENDIX "B."

The State of Indiana in using its police power in the control and regulation of coal mining, has enacted many statutes and amendments, and on account of the peculiarities and inherent hazards of the business, has provided, among other things, as follows:

1. Defining "mine."
2. Defining "operator."
3. For maps of each mine and depositing with inspector of mines showing ore mined, arrangement of haulage roads, air courses, breakthroughs, brattices, air-bridges, or overcasts, doors, and providing penalties.
4. Recording maps with county recorder.
5. Certified copy of maps to be used as evidence in any court of the state.
6. Room in state house provided to preserve maps.
7. Forbidding more than 10 persons to work after 5,000 square yards have been excavated until second outlet is provided.
8. Air and escape shafts separated from hoisting shafts by 200 feet of natural strata, and provided with stairways not less than two feet in width and at an angle of not more than 50 degrees, with landings and guard-rails.
9. Escape and air shafts, when combined, to be separated by substantial partitions.

10. Control of air currents of overcasts and undercasts.
11. Approaches to escape shafts to be kept free from falling slate, mine tracks, mine cars and other debris.
12. Control of surface water by rings and preventing wetting persons descending and ascending shafts.
13. Permitting hoisting apparatus at escape shafts.
14. Traveling roads, or gangways, to outlet separated by 200 feet of natural strata and not less than four feet in height or less than four feet in width and free from water as average haulage roads.
15. Placement of conspicuous sign boards to places of exit.
16. Prohibiting inflammable structures or powder magazines near escape way, jeopardizing the workmen.
17. Explosive materials to be stored in fire proof buildings on surface located not less than 300 feet from any other building.
18. Fans prohibited from being located directly over the opening of an air shaft or escapement shaft, and arranged so as to enable the air current to be reversed.
19. Providing for wire ropes in hoisting cages, fastened to a drum and examined every morning by some competent person.
20. Cage covers of  $\frac{1}{4}$ -inch boiler plate overhead on all carriages or cages.

21. Providing for improved safety gates and safety spring on top of every slope.
22. Approved safety catches shall be attached to every cage.
23. Persons prohibited from riding on cages during hoisting and limited to six men at a time.
24. Drums shall be equipped with brakes.
25. Indictors shall be attached to hoisting apparatus.
26. Vertical or flat gates protecting the mouth of each mine.
27. Two lighted lamps at shaft during mine operation.
28. Gates hung at each vein except the lower one, preventing men from falling into the shaft.
29. Number of lamps may be increased by inspector.
30. Safety lamps provided by and to be property of operator and remain in the custody of mine boss, who shall keep them in condition and locked while in use.
31. Metal speaking tubes from top to bottom suitably adapted to free passage of sound.
32. Code of signals with bells or whistle, the copy of the statutory code to be conspicuously posted on top and bottom and in engine room.
33. Abandoned mines to be securely fenced off.
34. Operator to provide for scale of standard manufacture, and compelled to keep U. S. standard weights to test the scales.
35. Weighman and check-weighman to examine and balance scales each morning.
36. Each miner's car of coal to be weighed and tabulated.

37. Disputes over scales and weights to be referred to inspector of mines.
38. Owners of lead given right of examination of scales and weights.
39. Employment of sober, competent engineers, who shall refuse to permit loitering in engine room.
40. Men shall not be lowered or hoisted exceeding 600 feet per minute.
41. Ventilation affording not less than 100 cubic feet of air per minute for each person employed, and 300 cubic feet for each horse or other animal measured at foot of downcast, and as much more as circumstances may require.
42. Air shall be forced and circulated around main entries, cross entries and working places so said mine shall be free from standing gas and render harmless all noxious and dangerous gases.
43. Places where fire damp is known or supposed to exist shall be examined by competent fire boss before each shift, who shall mark the dangerous places.
44. Regulating ventilation furnaces.
45. Employment of competent mine bosses who shall take down all loose coal, slate and rock overhead on the traveling and airway.
46. Providing for measuring of air currents at least once a week at the inlet or outlet, and report to inspector once each month.
47. Air currents split for at least every 50 persons and inspector may order separate currents.
48. Mine inspector may close down a mine after notice

to operator of unsafe conditions, when the operator shall refuse to rectify the same.

49. Break-throughs shall be constructed every 45 feet, and those, except near the working faces, shall be closed and made air tight.
50. Providing for trappers and automatic or mechanical doors, subject to the approval of inspector of mines.
51. All dry roadways and entries that are charged with dust shall be regularly and thoroughly sprinkled.
52. Mine boss to examine every working place at least every alternate day.
53. Shall supply sufficient timbers, props and caps of proper lengths to working places to secure the works from caving in.
54. Shall secure unsafe places on notice.
55. Written form of receipt of notice prescribed.
56. Accidents and deaths to be reported to inspector, and deaths reported to coroner.
57. Traveling ways provided.
58. Places of refuge three feet deep and not more than 30 yards apart in certain mines of gravity or incline planes.
59. On hauling roads where hauling is done by animals refuge places must be cut in the side wall at least  $2\frac{1}{2}$  feet deep, measured from side of the car.
60. At all mines employing 10 or more men, the operator must provide a comfortable stretcher, a woolen water-proof blanket, a roll of bandages,

a supply of linseed oil, lime, camphor, turpentine, antiseptic gauze, dressing and surgeon's splints for the dressing of broken bones, and provide comfortable apartment near mouth of the mine in which any one injured may rest while awaiting transportation to his home, and provide for the speedy transportation of any one injured in such mine to his home.

61. Entries shall be cut and constructed so a space shall be provided on one or both sides continuously of any track of at least two feet in width free from props, loose slate, debris, or other obstructions, except in the block coal mines, which are exempted. Stringent penalties are provided for the violating of these provisions.
62. The law regulates abandoned workings containing dangerous accumulations of water or gases.
63. The operator shall supply a timber blackboard where miners may indicate the number and lengths of the same.
64. Penalties are provided for the interfering or injuring of safety appliances and machinery of any mine.
65. Lights shall be placed at least five feet distant from powder kegs or boxes when being opened.
66. When blasting off the solid holes shall not be drilled for blasting more than one foot past the end of his cutting or loose end, or prepare a shot in such a way that the distance from the hole to the loose end shall be more than five feet measured at right angles to the direction of the hole.

67. No steel or iron needle or tool shall be used in tamping, but the needle and tamping bar shall be copper.
68. No coal dust or inflammable material shall be used in tamping and some soft material shall be placed next to the cartridge.
69. Only pure animal or vegetable oil or oils free from smoke shall be used for illuminating purposes, all oils to be tested by state oil inspector, or his deputies, at 70° Fahrenheit. The specific gravity of oil must not exceed 24°. An elaborate system of testing is further provided.
70. A check-weighman is provided for and his wages shall be paid by the miners.
71. The law somewhat elaborately provides for the creation of the office of inspector of mines and deputies, who shall have certain qualifications, and who shall hold examinations for the purpose of issuing mine boss and fire boss licenses to those passing the examinations, and in all mines containing dangerous gases operators are required to employ competent licensed fire bosses. The inspector of mines, under the law, gathers and publishes statistical data for public information.
72. The mining laws provide for the payment of wages and gives miners' wage for labor liens and priority of payment.
73. It also gave injured employees and dependents certain civil rights of actions and remedies, since supplanted by the employers' liability act of

1911, and since supplanted by the amended section 18 of the workmen's compensation law, which singled out the coal industry and made it compulsory to all operators and employes engaged in the business of mining coal.

74. Adjacent owners or occupants of coal lands are given the right of examination, exploration, surveying and inspection.
75. It is made unlawful without consent of the mine management to take any dynamite or dynamite cap or other high explosive into any mine.
76. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state to prepare any "shot" in such a way that the distance from the drill hole to the "loose end," chance or end of cutting shall be more than five feet measured at right angles to the direction of the hole; or to place any charge of powder or other explosive in any drill hole prepared for any "shot" in which the breast of coal to be dislodged is of greater width than the depth of the drill hole; or to use in preparing any "shot" more than six pounds of powder; or to place any powder in any drill hole for the purpose of preparing any "shot" without measuring the amount so placed therein with a substantial measure so made as to indicate the weight of blasting powder measured therein; or to open a keg, can or other package containing powder by means of a pick or in any other manner except in pursuance of the



manner provided in the manufacture of such keg, can or package; or to sell or offer for sale any keg, can or package containing powder, unless such can, keg or package be provided with a sufficient device for opening the same and permitting the discharge therefrom of all the powder therein contained; or to store any blasting powder, dynamite or other high explosive in any coal mine; or to prepare any drill bit more than  $3\frac{1}{4}$  inches in diameter to be used in boring holes for the purpose of preparing any shot or to use any dynamite or other high explosive in conjunction with black powder. It shall be unlawful for any owner, operator or lessee of any coal mine, coal shaft or slope coal mine to refuse, fail or neglect to sharpen and prepare for use any bit for preparing drill holes, if such bit is  $3\frac{1}{4}$  inches in diameter, or less, and such owner, operator or lessee, or his representatives, has been requested to prepare and sharpen the same by any owner of such bit or bits.

77. Section 8605 provides certain facts shall constitute prima facie evidence of guilt.
78. Section 8606 provides: It shall be unlawful in any coal mine for any person to explode or light any shot in any working place simultaneously with the explosion or lighting of any shot by the same or any other person in any other working place on the same entry, except in working places where the coal is under cut by machinery.

79. Operators shall provide suitable materials for tamping.
80. Section 8610, Burns' Rev. 1914, provides: That at any coal mine in the state where the miners working therein so elect, persons may be employed to act as shot firers and their wages shall be paid by the miners working therein: Provided, That nothing herein contained shall affect any existing contract as to shot firing.
81. The inspector of mines and his deputies are empowered to act as police officers.
82. Certain penalties are provided for the failure of an inspector to perform his lawful duties or any other law relating to the health and safety of persons employed in coal mines and matters connected therewith.
83. Section 8618 Burns' supra, provides: That the chemist to the state board of health shall at stated times hold examinations for coal miners 21 years of age, and possessing a good moral character, and who has had at least five years' practical experience as a coal miner, as eligible for inspector of mines.
84. Section 8623 provides for wash houses and penalties for the violation of the provisions of said act.
85. Section 8624l, inclusive, provides for the creation of a miners' examining board in certain counties and the issuance and rejection of certificates of competency. The legislature used these words: "That the business of mining

coal is hereby declared a dangerous occupation, industry and business. Under the provisions of this law no one can lawfully engage in the business of mining coal until he has passed the prescribed legal requirements.

As an Example of how 45 States and Territories have made different Classifications as to employments, covered and not covered as to Compulsory Compensation, varied and different kinds of Insurance, Maximum and Minimum periods and amounts of money for Medical Services, and Waiting Periods, we herewith submit the following Table, prepared by the United States Department of Labor, Bureau of Labor Statistics, covering the principal features of Laws relating to Workmen's Compensation and Insurance, according to the Chart, revised January 1st, 1920. These States are in operation and none have been declared unconstitutional.

## APPENDIX "C"

STATE	Date Act Became Effective	Employments Not Covered	Compensation Compulsory or Elective	Insurance	Medical Service		Waiting Period
					Maximum Period	Maximum Amount	
Alabama.....	1920 (Jan. 1).....	Less than 16 employees..... Farm labor..... Domestic service.....	Elective.....	Not required.....	60 days....	\$100.....	2 weeks. None if disabled 4 weeks.
Alaska.....	1915 (July 26).....	All except mining operations having 3 or more employees..	Elective.....	Not required.....	No provision.....	No provision.....	2 weeks. None if disabled 8 weeks.
Arizona.....	1912 (Sept. 1).....	Nonhazardous.....	Compulsory...	Not required.....	No provision.....	No provision.....	2 weeks. None if disabled over 2 weeks
California.....	1911 (Sept. 1).....	Farm labor..... Domestic service.....	Compulsory...	State fund..... Private companies. Self-insurance.....	Unlimited.	Unlimited.	1 week.
Colorado.....	1913 (Aug. 1).....	Less than 4 employees..... Farm labor..... Domestic service..... Casual labor.....	Elective.....	State fund..... Private companies. Self-insurance.....	60 days....	\$200.....	10 days.
Connecticut.....	1914 (Jan. 1).....	Less than 5 employees..... Casual labor.....	Elective.....	Private companies. Self-insurance.....	Unlimited.	Unlimited.	1 week. None if disabled over 4 weeks.
Delaware.....	1918 (Jan. 1).....	Less than 5 employees..... Domestic service..... Farm labor..... Outworkers..... Casual labor.....	Elective.....	Private companies. Self-insurance.....	2 weeks....	\$75.....	2 weeks. None if disabled 4 weeks.
Hawaii.....	1915 (July 1).....	Nonindustrial. Casual labor.....	Compulsory...	Private companies. Self-insurance.....	Unlimited.	\$150.....	1 week. None if partially disabled.
Idaho.....	1918 (Jan. 1).....	Farm labor..... Domestic service..... Employees receiving over \$2,400 a year.....	Compulsory...	State fund..... Private companies. Self-insurance.....	Unlimited.	Unlimited.	1 week.

Illinois.....	1912 (May 1)...	Nonhazardous..... Farm labor.....	Casual labor <sup>1</sup> .....	Compulsory...	Private companies, Self-insurance.....	8 weeks <sup>2</sup> ...	\$200 <sup>3</sup> .....	1 week. None if disabled 4 weeks.
Indiana.....	1915 (Sept. 1)...	Farm labor..... Domestic service.....	Casual labor <sup>1</sup> ..... Railroad employees in train service.....	Compulsory as to mining...	Private companies, Self-insurance.....	30 days <sup>4</sup> ...	Unlimited.	1 week.
Iowa.....	1914 (July 1)...	Farm labor..... Domestic service.....	Casual labor <sup>1</sup> ..... Nonhazardous clerical occupations.....	Elective.....	Private companies, Self-insurance.....	4 weeks.....	\$100 <sup>4</sup> .....	2 weeks.
Kansas.....	1912 (Jan. 1)...	Nonhazardous..... Hazardous employments hav- ing less than 5 employees..... Farm labor.....	Casual labor <sup>1</sup> ..... State municipal employees except workmen.....	Elective.....	Not required.....	50 days.....	\$150.....	1 week.
Kentucky.....	1916 (Aug. 1)...	Less than 3 employees..... Farm labor.....	Domestic service.....	Elective.....	Private companies, Self-insurance.....	90 days.....	\$100.....	1 week.
Louisiana.....	1915 (Jan. 1)...	Nonhazardous.....	Casual labor <sup>1</sup> .....	Elective.....	Not required.....	Unlimited.	\$150.....	1 week. None if disabled six weeks.
Maine.....	1916 (Jan. 1)...	Less than 6 employees..... Farm labor..... Domestic service.....	Casual labor <sup>1</sup> ..... Logging operations.....	Elective.....	Private companies, Self-insurance.....	30 days <sup>4</sup> ...	\$100 <sup>4</sup> .....	10 days.
Maryland.....	1914 (Nov. 1)...	Nonhazardous..... Farm labor..... Domestic service..... Nonhazardous public employ- ments.....	Casual labor..... Country blacksmiths..... Employees receiving over \$2,000 a year.....	Compulsory...	State fund..... Private companies, Self-insurance.....	Unlimited.	\$150.....	2 weeks. 1 week if totally and permanently dis- abled
Massachusetts.....	1912 (July 1)...	Farm labor..... Domestic service..... Casual labor <sup>1</sup> .....	State employees, except workmen.....	Elective.....	Private companies.....	2 weeks <sup>4</sup> ...	Unlimited.	10 days.
Michigan.....	1912 (Sept. 1)...	Farm labor..... Domestic service.....	Casual labor <sup>1</sup> .....	Elective.....	State fund..... Private companies, Self-insurance.....	90 days.....	Unlimited.	1 week. None if disabled six weeks.
Minnesota.....	1913 (Oct. 1)...	Farm labor..... Domestic service..... State employees.....	Casual labor <sup>1</sup> ..... Steam railroads.....	Elective.....	Not required.....	90 days <sup>4</sup> ...	\$100 <sup>4</sup> .....	1 week.

## APPENDIX "C"

STATE	Date Act Became Effective	Employments Not Covered	Compensation Compulsory or Elective	Insurance	Medical Service		Waiting Period
					Maximum Period	Maximum Amount	
Missouri.....	Approved 1916 (Apr. 26)...	Less than 5 employees..... Farm labor..... Domestic service..... Casual labor <sup>1</sup> .....	Elective.....	Private companies, Self-insurance.....	8 weeks.....	\$200.....	1 week. None if disabled over six weeks.
Montana.....	1915 (July 1)...	Nonhazardous..... Farm labor..... Domestic service..... Casual labor <sup>1</sup> .....	Elective.....	State fund..... Private companies, Self-insurance.....	2 weeks.....	\$50.....	2 weeks.
Nebraska.....	1914 (Dec. 1)...	Farm labor..... Domestic service..... Casual labor <sup>1</sup> .....	Elective.....	Private companies, Self-insurance.....	Unlimited.	\$200.....	1 week. None if disabled 6 weeks.
Nevada.....	1911 (July 1)...	Farm labor..... Domestic service..... Casual labor <sup>1</sup> .....	Elective.....	State fund.....	90 days <sup>2</sup> ...	Unlimited.	1 week. None if disabled 2 weeks.
New Hampshire..	1912 (Jan. 1)...	Nonhazardous..... Factories having less than 5 workmen..... Public employees.....	Elective.....	Self-insurance.....	No pro- vision.....	No pro- vision.....	2 weeks.
New Jersey.....	1911 (July 4)...	Casual labor.....	Elective.....	Private companies, Self-insurance.....	4 weeks <sup>1</sup> ...	\$50 <sup>1</sup> .....	10 days.
New Mexico.....	1917 (June 8)...	Nonhazardous..... Hazardous employments hav- ing less than 4 employees..... Public employees..... Casual labor <sup>1</sup> .....	Elective.....	Private companies, Self-insurance.....	2 weeks.....	\$50.....	2 weeks.
New York.....	1914 (July 1)...	Nonhazardous employments having less than 4 workmen..... Farm labor..... Domestic service.....	Compulsory...	State fund..... Private companies, Self-insurance.....	60 days <sup>2</sup> ...	Unlimited.	2 weeks. None disabled over 7 weeks.
North Dakota....	1910 (Mar. 5)...	Farm labor..... Domestic service..... Casual labor <sup>1</sup> ..... Steam railroads.....	Compulsory...	State fund.....	Unlimited.	Unlimited.	1 week. None disabled over 1 week.
Ohio.....	1912 (Jan. 1)...	Less than 5 employees..... Casual labor <sup>1</sup> .....	Compulsory...	State fund, Self-insurance.....	Unlimited.	\$200 <sup>1</sup> .....	1 week.

Oklahoma.....	1918 (Sept. 1)...	Nonhazardous Hazardous employments hap- ping less than 3 employees... Farm labor.....	Clerical occupations... Nonhazardous public em- ployments.....	Compulsory....	Private companies... Self-insurance.....	60 days <sup>a</sup> ...	\$100 <sup>a</sup> .....	1 week. None if disabled 3 weeks.
Oregon.....	1913 (July 1)...	Nonhazardous.....	Farm labor.....	Elective.....	State fund.....	Unlimited.	\$250 <sup>a</sup> .....	None.
Pennsylvania.....	1916 (Jan. 1)...	Farm labor..... Domestic service.....	Casual labor? Outworkers.....	Elective.....	State fund..... Private companies Self-insurance.....	10 days...	\$100 <sup>a</sup> .....	10 days.
Porto Rico.....	1916 (July 1)...	Less than 3 employees..... Farm labor..... Domestic service..... Nonhazardous clerical occu- pations.....	Public employees not en- gaged on public works Employees receiving over \$1,500 a year.....	Elective.....	State fund.....	Unlimited.	Unlimited.	None.
Rhode Island.....	1912 (Oct. 1)...	Less than 6 employees..... Farm labor..... Domestic service.....	Casual labor? Employees receiving over \$1,600 a year.....	Elective.....	Private companies Self-insurance.....	4 weeks...	Unlimited.	2 weeks. Non if disabled over 4 weeks.
South Dakota.....	1917 (June 1)...	Farm labor..... Domestic service.....	Casual labor? Casual labor?	Elective.....	Private companies Self-insurance.....	12 weeks...	\$150.....	10 days. None if disabled 6 weeks.
Tennessee.....	1919 (July 1)...	Less than 10 employees..... Farm labor..... Domestic service.....	Public employees..... Coal miners..... Casual labor?	Elective.....	Private companies Self-insurance.....	30 days...	\$100.....	2 weeks. None if disabled 6 weeks.
Texas.....	1913 (Sept. 1)...	Less than 3 employees..... Farm labor..... Domestic service.....	Public employees..... Railways..... Casual labor?	Elective.....	Private companies.....	2 weeks <sup>d</sup> ...	Unlimited.	1 week.
Utah.....	1917 (July 1)...	Less than 3 employees..... Farm labor.....	Domestic service..... Casual labor?	Compulsory..	State fund..... Private companies Self-insurance.....	Unlimited.	\$500.....	3 days.
Vermont.....	1915 (July 1)...	Less than 11 employees..... Domestic service..... State employees.....	Casual labor? Employees receiving over \$2,000 a year.....	Elective.....	Private companies Self-insurance.....	2 weeks...	\$100.....	1 week.
Virginia.....	1919 (Jan. 1)...	Less than 11 employees..... Farm labor..... Domestic service.....	Casual labor? Casual labor?	Elective.....	Private companies Self-insurance.....	30 days...	Unlimited.	2 weeks.





# SUPREME COURT OF THE UNITED STATES.

No. 186.—OCTOBER TERM, 1920.

Lower Vein Coal Company, Ap- pellant, vs. Industrial Board of Indiana et al.	} Appeal from the District Court of the United States for the District of Indiana.
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[February 28, 1921.]

Mr. Justice McKENNA delivered the opinion of the Court.

Appellant, the Lower Vein Coal Company, is a corporation of the State of Indiana. The Industrial Board of Indiana is a board created by an Act of the General Assembly of Indiana, approved March 8, 1915, known as "The Indiana Workmen's Compensation Act". The personal appellees are members of the board.

This suit was brought by the Coal Company to enjoin the Industrial Board, the Governor and Attorney General of the State, from enforcing in any manner, Section 18 of the Workmen's Compensation Act of the State, as amended by the General Assembly in 1919, from asserting that plaintiff is compelled to operate under the Compensation Act, from hearing any claim for compensation asserted by any employe of the plaintiff so long as plaintiff elects not to come within the provisions of the act from making any award to any injured employe, or his or her dependents, during such time, and from doing any other act or thing prejudicial to the rights of the plaintiff, so long as it elects not to be bound by the act.

The grounds for this relief were set forth in a complaint of considerable length to which the defendants separately and severally answered. After trial of the issues thus presented the District Court entered its decree dismissing the bill for want of equity. This appeal was then prosecuted.

The Compensation Act is very long and declares its purposes to be to promote the prevention of industrial accidents; to cause provision to be made for adequate medical and surgical care for in-

## 2 *Lower Vein Coal Co. vs. Industrial Board of Indiana et al.*

jured employes in the course of their employment; to provide methods of insuring the payment of such compensation; to create an Industrial Board for the administration of the act and to prescribe the powers and duties of such board; to abolish the State Bureau of Inspection, and provide for the transfer to the Industrial Board certain rights, powers and duties of the Bureau of Inspection.

The original act passed in 1915 was elective and left employer and employe the option of rejecting its terms with certain exceptions. It was amended in 1917, and railroad employes engaged in train service were exempted from its provisions.

The amendment of 1919 made the act mandatory as to all coal mining companies of the State and its political divisions and as to municipal corporations. To all other employers the act remains permissive. They may elect to operate under its provisions. Railroad employes engaged in train service are not within them.

The sole question presented is the validity of Section 18 as amended, that is, the compulsion of coal companies to the operation of the Act, while to other employers it is permissive, or does not apply at all. The grounds of attack upon it are that it violates the due process clause and the equal protection of the laws' clause of the Fourteenth Amendment of the Constitution of the United States and Sections 21 and 23 of the Indiana Bill of Rights. Specifically, the question is, as the Coal Company expresses it, "whether the Indiana General Assembly may pass a general compensation law, applicable to all employers within the State, and make it compulsory as to one hazardous employment, and elective as to all others (many equally as hazardous) except railroad employes in train service to which it does not apply at all". And the insistence is "that such a classification rests upon no sound or just basis", and hence is inimical to the Constitution of the United States and that of Indiana.

The principle of law involved and the power of a State to distinguish and classify objects in its legislation have been too often declared, too abundantly and variously illustrated, to need repetition and we pass immediately to the contention of counsel. It is that the act is addressed to hazardous employments and where in employments that character exists, sameness exists, and a law which ignores such sameness discriminates in its operation

and offends the Constitution of the United States. It may be that the Coal Company does not contend for so broad a principle but may assert protection by a comparison of its business with other businesses equally hazardous, or even more hazardous than coal mining, and that necessarily the exemption of the businesses so compared from the law taints it with illegal discrimination. To support and justify the comparison, statistics of accidents are given in the complaint, and in the number of accidental injuries coal mines are made to run fifth. Notwithstanding those other companies may go in or out of the law—coal mining companies must stay.

The answer replies with counter assertions and statistics and a detail of the methods of coal mining and what their methods cause of accidents to the miners, and to these are added, it is said, the risks that come from the generation of noxious and explosive gases. And there is evidence in the case addressed to the conflicting statistics and the conclusions to be deduced from them which occupies about ninety-three pages of the record. In this evidence occupations and businesses are compared with estimates of accidents in each, and their character, severity and consequences, fatal and otherwise. There is also testimony of the wages that mine workers get and of their prosperity, and that they have a legal department and paid attorneys. And there is averment and testimony of two organizations of mine owners who retain officers and attorneys to defend suits and secure releases from personal injury claims.

The length and character of the reports and tables of statistics preclude summary. It may be conceded that different deductions may be made from them, but they and the controversies over them and what they justified or demanded of remedy were matters for the legislative judgment and that judgment is not open to judicial review. Indeed, there may be a comprehension of effects and practical influences that can not be presented to a court and measured by it, and which it may be the duty of government to promote or resist, or deemed advisable to do so. Degrees of policies if they have bases are not for our consideration and the bases cannot be judged of by abstract speculations or the controversies of opinion. Legislation is impelled and addressed to concrete conditions deemed or demonstrated to be obstacles to something better, and the better, it may be, having attainment or prospect in different occupations

#### 4 *Lower Vein Coal Co. vs. Industrial Board of Indiana et al.*

(we say occupations as this case is concerned with them) dependent in the legislative consideration upon their distinctions in some instances, upon their identities in others, and as the case may be, associated or separated in regulation. And this is the rationale of the principle of classification and of the cases which are at once the results and illustrations of it.

There are facts of especial pertinence that make the principle apply in the present case and justify the legislation of the State. That coal mining has peculiar conditions has been quite universally recognized and declared. It has been recognized and declared by this court and is manifested in the laws of the States where coal mining obtains. There is something in this universal sense and its impulse to special legislation—enough certainly to remove such legislation from the charge of being an unreasonable or arbitrary exercise of power.

The action of the Coal Company indicates that it considered the coal business distinctive. Other businesses though according to the Coal Company's assertion as hazardous as coal mining, accepted the law, the Coal Company and other coal companies rejected it. To this, of course, the coal companies were induced by comparison of advantages but the inducements to reject the legislation might well have been the inducement to make it compulsory. At any rate, there is, taking that and all other matters into consideration, grounds for the legislative judgment expressed in the amendment of 1919 under consideration, that is, Section 18 as amended. And the fact is to be borne in mind that there are 30,000 employes in the State engaged in coal mining.

The Coal Company further contends that the law includes within its terms all the Company's employes whether engaged in the hazardous part of its business or not so engaged. In other words, it asserts that the conditions of those who work underground may justify the law but do not justify its application to those who work above ground. The contention has a certain speciousness but cannot be entertained. It commits the law and its application to distinctions that might be very confusing in its administration and subjects it and the controversies that may arise under it to various tests of facts and this against the same Company. The contention is answered in effect by *Booth v. State of Indiana*, 237 U. S. 391.

Appellant invokes against the law Sections 21 and 23 of the Indiana Bill of Rights which respectively provide that no man's property or particular services shall be taken without just compensation, nor except in the case of the State, without compensation being first assessed and tendered, nor shall there be a grant of privileges to any citizen or class of citizens that shall not belong to all citizens.

Appellant, however, while admitting, indeed, citing cases to show that the classification of objects of legislation under the Bill of Rights of the State has the same bases of power and purpose as the classification of objects under the Fourteenth Amendment of the Constitution of the United States, yet contends that the Supreme Court of the State has strictly construed the Bill of Rights of the State, and has observed a precision in classification not required or practiced in the application of the Fourteenth Amendment. Citing for this *Indianapolis T. & T. Co. v. Kinney*, 171 Ind. 612, 617; *Cleveland, etc. R. R. Co. v. Foland*, 174 Ind. 411; *Richey v. Cleveland, etc. R. R. Co.*, 176 Ind. 542, at p. 558.

These cases were constructions of the Employers' Liability Act of the State. It was held in *Indianapolis T. & T. Co. v. Kinney*, *supra*, that that act was constitutional as to railroads because it related "to the peculiar hazards inherent in the use and operation of" them, and only applied to employes operating trains. It is the contention of the Coal Company that it is a deduction from that decision and the others cited, which may be said to be of the same effect, that there must be a difference observed between employes of coal mining companies as they are or are not engaged in the hazardous part of the business, and as that distinction is not observed in the Compensation Act it infringes the Bill of Rights of the State because it is made compulsory "upon coal mining companies with respect to their employes not engaged in the hazardous part of the business, and as to all other private business enterprises within the State, except railroad employes in train service, which are excluded, it is purely optional."

The argument in support of the contention is that the act requires all employes in the coal mining business to be paid compensation under the act whether employed above ground or under ground, that is, whether hazardedly employed or otherwise, whereas in the cited cases, it is insisted, the court considered such

employment as a material distinction and that legislation which disregarded it would have unconstitutional discrimination.

The contention only has strength by regarding employers' liability acts and workmen's compensation acts as practically identical in the public policy respectively involved in them and in effect upon employer and employe. This we think is without foundation. They both provide for reparation of injuries to employes but differ in manner and effect, and there is something more in a compensation law than the element of hazard, something that gives room for the power of classification which a legislature may exercise in its judgment of what is necessary for the public welfare, to which we have adverted, and which cannot be pronounced arbitrary because it may be disputed and "opposed by argument and opinion of serious strength". *German Alliance Insurance Co. v. Kansas*, 233 U. S. 389; *International Harvester Co. v. Missouri*, 234 U. S. 199.

*Decree affirmed.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*